
**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Name of the Claimant
Morgan Stanley DW, Inc.

Case Number: 04-07188

Name of the Respondent
Michael E. Blankenship

Hearing Site: Boca Raton, Florida

Nature of the Dispute: Member vs. Associated Person.

REPRESENTATION OF PARTIES

For Morgan Stanley DW, Inc., hereinafter referred to as "Claimant": Ronald P. Kane, Esq., Kane & Fisher, Ltd., Chicago, Illinois.

For Michael E. Blankenship, hereinafter referred to as "Respondent": Lonnie K. Martens, Esq., The Martens Law Firm, Jupiter, Florida.

CASE INFORMATION

Statement of Claim filed on or about: October 12, 2004.

Claimant signed the Uniform Submission Agreement: October 6, 2004.

Respondent signed the Uniform Submission Agreement: November 30, 2004.

Statement of Answer, Affirmative Defenses and Counterclaim filed by Respondent on or about: December 17, 2004.

Motion to Dismiss Respondent's Answer, Affirmative Defenses and Counterclaim filed by Claimant on or about: January 17, 2005.

Response to Claimant's Motion to Dismiss filed by Respondent on or about: May 10, 2005.

Reply to Respondent's Response to Claimant's Motion to Dismiss filed by Claimant on or about: May 24, 2005.

CASE SUMMARY

Claimant asserted a claim for breach of Promissory Notes. The cause of action relates to Respondent's former employment by Claimant and the Promissory Notes dated October 20, 1999 ("Note 1") and October 17, 2000 ("Note 2"), collectively, (the "Agreements") executed by Respondent.

Unless specifically admitted in his Statement of Answer, Respondent denied the allegations contained in the Statement of Claim and asserted various defenses. In addition, in his Counterclaim, Respondent asserted the following causes of action: fraudulent inducement to accept compensation; and, wrongful termination. The causes of action relate to Respondent's former employment by Claimant and the Agreements at issue.

Unless specifically admitted in its Response to Respondent's Counterclaim, Claimant denied the allegations contained therein and asserted a Motion to Dismiss Respondent's Counterclaim.

In his response to Claimant's Motion to Dismiss, Respondent denied the allegations contained therein and asserted various defenses.

RELIEF REQUESTED

Claimant requested: (1) compensatory damages in the amount of \$50,000.00, representing the principal balance due and owing under Promissory Note 1; (2) interest accrued during the term of Note 1 in the amount of \$3,157.65; (3) interest due and owing under Note 1 from the date of default to the date of payment; (4) compensatory damages in the amount of \$73,500.00, representing the principal balance due and owing under Promissory Note 2; (5) interest accrued during the term of Note 2 in the amount of \$6,429.60; (6) interest due and owing under Note 2 from the date of default to the date of payment; (7) costs of collection including attorneys' fees; and, (8) any and all further relief that the Panel deemed just and proper.

Notwithstanding the foregoing, should the Panel forgive any installments due on the Agreements, Claimant requests an order directing Respondent to pay taxes on such balances, as well as other amounts due as follows: (1) compensatory damages in the amount of \$25,000.00, representing the principal balance due and owing under Promissory Note 1; (2) interest accrued during the term of Note 1 in the amount of \$328.32 ; (3) federal and state income and employment taxes due and owing under Note 1 in the amount of \$9,528.75; (4) interest due and owing under Note 1 from the date of default to the date of payment; (5) compensatory damages in the amount of \$49,000.00, representing the principal balance due and owing under Promissory Note 2; (6) interest accrued during the term of Note 2 in the amount of \$855.40; (7) federal and state income and employment taxes due and owing under Note 2 in the amount of \$10,271.99; and, (8) interest due and owing under Note 2 from the date of default to the date of payment.

In his Counterclaim, Respondent requested: 1) compensatory damages in the approximate amount of \$450,000.00; and, 2) a dismissal of the Statement of Claim.

OTHER ISSUES CONSIDERED AND DECIDED

Pursuant to the agreement of the parties, the Panel in this matter is comprised exclusively of non-public arbitrators.

Claimant asserted a Motion to Dismiss Respondent's Counterclaim on the basis that Respondent's Counterclaim is barred by a Settlement and Release Agreement previously entered into by the parties in connection with previous litigation, to which

Respondent objected. On or about June 14, 2005, the Panel issued an order which denied Claimant's Motion to Dismiss.

During the evidentiary hearing on or about November 10, 2006, Respondent asserted an ore tenus motion for expungement of this claim from his permanent registration records maintained by NASD Central Registration Depository ("CRD"). Claimant did not object to this request.

The parties have agreed that the Award in this matter may be executed in counterpart copies.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimant's claims are denied in their entirety.

Respondent's counterclaim is denied in its entirety.

Any and all claims for relief not specifically addressed herein, including Claimant's request for attorneys' fees and Respondent's request for expungement, are denied.

FEES

Pursuant to NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$1,000.00
Counterclaim filing fee	= \$ 300.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firm Morgan Stanley DW, Inc. is a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00
<u>Total Member Fees</u>	<u>= \$5,200.00</u>

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments requested during these proceedings for which fees were assessed.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No three-day cancellation fees were incurred in this matter.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were incurred in this matter.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Decision on a discovery-related motion on the papers with One (1) arbitrator @ \$200.00	= \$ 200.00
Claimant submitted one (1) discovery-related motion	
Two (2) Pre-hearing sessions with the Panel @ \$1,125.00/ session	= \$ 2,250.00
Pre-hearing conferences: April 11, 2005	1 session
June 14, 2005	1 session
Nine (9) Hearing sessions @ \$1,125.00/ session	= \$10,125.00
Hearing Dates: October 24, 2006	2 sessions
October 25, 2006	2 sessions
October 26, 2006	2 sessions
October 27, 2006	1 session
November 10, 2006	2 sessions
Total Forum Fees	= \$12,575.00

The Panel has assessed \$6,287.50 of the forum fees to Claimant.
The Panel has assessed \$6,287.50 of the forum fees to Respondent.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to: additional copies of arbitrator awards; copies of audio transcripts; retrieval of documents from archives; interpreters; and, security.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 5,200.00
Forum Fees	= \$ 6,287.50
Total Fees	= \$12,487.50
Less payments	= \$ 7,325.00
Balance Due NASD Dispute Resolution	= \$ 5,162.50

Respondent is solely liable for:

Counterclaim Filing Fee	= \$ 300.00
Forum Fees	= \$ 6,287.50
Total Fees	= \$ 6,587.50
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 5,162.50

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Bernard Hornick	-	Non-Public Arbitrator, Presiding Chairperson
David L. Giertz	-	Non-Public Arbitrator
Ronald F. Rohe	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/

11/14/06

Bernard Hornick
Non-Public Arbitrator, Presiding Chairperson

Signature Date

/s/

11/14/06

David L. Giertz
Non-Public Arbitrator

Signature Date

/s/

11/14/06

Ronald F. Rohe
Non-Public Arbitrator

Signature Date

November 14, 2006

Date of Service (For NASD Dispute Resolution office use only)

FROM :

NASD Dispute Resolution
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Concurring Arbitrators' Signatures



Bernard Hornick
Non-Public Arbitrator, Presiding Chairperson

11/14/06
Signature Date

David L. Gertz
Non-Public Arbitrator

Signature Date

Ronald F. Rohe
Non-Public Arbitrator

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