

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Morgan Stanley DW Inc.

Case Number: 04-07192

Name of the Respondent
William Herndon

Hearing Site: Wichita, Kansas

NATURE OF THE DISPUTE

Member Firm v. Associated Person

REPRESENTATION OF PARTIES

Claimant Morgan Stanley DW Inc., hereinafter referred to as "Claimant": Diane C. Fischer, Esq., of Kane & Fischer, Ltd., located in Chicago, Illinois.

Respondent William Herndon, hereinafter referred to as "Respondent": Originally represented by Alexander B. Mitchell, II, Esq., of Klenda, Mitchell, Austerman & Zuecher, located in Wichita, Kansas. Mr. Mitchell withdrew as counsel prior to hearing and Respondent did not appear at the hearing.

CASE INFORMATION

Statement of Claim filed: October 12, 2004.

Claimant signed the Uniform Submission Agreement: October 5, 2004.

Claimant's Motion to Bar for Failure to File an Answer filed: May 31, 2005.

Respondent did not file a Statement of Answer, a signed Uniform Submission Agreement, or a Response to Claimant's Motion to Bar for Failure to File an Answer.

CASE SUMMARY

Claimant asserted that Respondent failed to pay the sum due on two promissory notes executed as part of his employment that secured two loans made to him. Pursuant to the terms of the Notes, all amounts unpaid became due upon the termination of Respondent's employment with Claimant. Respondent's termination occurred on March 29, 2004 and demand for payment was sent. Respondent refused to pay.

RELIEF REQUESTED

Claimant Morgan Stanley DW Inc. requested:

Note 1 executed 12/21/01

Compensatory Damages
Interest

\$107,800.00

At the rate of 5% per annum accrued during the term of the note (\$1,477.00) and on the balance due and owing since the default date of 3/29/04

Attorneys' Fees

Pursuant to the terms of the Note

Other Costs

Unknown

Other Monetary/Non-Monetary Relief if any:

Unknown

Note 2 executed 9/23/01

Compensatory Damages
Interest

\$161,700.00

At the rate of 5% per annum accrued during the term of the note (\$4,164.20) and on the balance due and owing since the default date of 3/29/04

Attorneys' Fees

Pursuant to the terms of the Note

Other Costs

Unknown

Other Monetary/Non-Monetary Relief if any:

Unknown

OTHER ISSUES CONSIDERED AND DECIDED

On August 12, 2005, the Panel heard argument regarding Claimant's Motion to Bar. After consideration of the Motion and arguments, the Panel granted the Motion and Respondent Herndon was barred from presenting any matter, arguments, or defenses at the hearing.

At hearing, Respondent failed to appear. NASD staff contacted the office of Respondent's counsel who the advised the staff that counsel had withdrawn his representation of Mr. Herndon. Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators determined that Respondent William Herndon was properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondent Herndon did not file a properly executed submission to arbitration with NASD Dispute Resolution, but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

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:

1. Respondent William Herndon is liable for and shall pay to the Claimant, Morgan Stanley DW Inc., the sum of \$269,500.00 as compensatory damages, plus interest at the rate of 5% per annum accrued during the term of the notes (\$5,641.20) and on the balance due and owing since the default date of March 29, 2004 to September 27, 2005 (\$20,195.24) for a total due to Claimant of \$295,336.44;
2. In addition, Respondent William Herndon is liable for and shall pay to the Claimant, Morgan Stanley DW, Inc. the sum of \$11,684.50 as attorneys' fees. In deciding to award attorneys' fees, the Panel considered the terms of the promissory notes executed by the Respondent and determined that authority existed for an award of attorneys' fees to the Claimant;
3. Furthermore, Respondent William Herndon is liable for and shall pay to Claimant, Morgan Stanley DW, Inc. the sum of \$2,430.80 as costs, including reimbursement of the claim filing fee and forum fees incurred in this case;
4. All additional costs of arbitration, including any additional attorneys' fees, will be borne by the party incurring the cost; and,
5. Any and all relief not specifically addressed herein is denied.

FEES

Pursuant to 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
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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. Pursuant to Rule 10333, Member Fees are not chargeable to any other party under Rules 10332[c] and 10205[c] of the Code of Arbitration Procedure. Accordingly, Morgan Stanley DW, Inc. is a party and the following Member Fees are assessed:

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed: None

Forum Fees and Assessments

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

Two (2) Pre-hearing sessions with Panel @ \$1,125.00	= \$ 2,250.00
Pre-hearing conferences: February 15, 2005 1 session	
August 12, 2005 1 session	
One (1) Hearing sessions @ \$1,125.00	= \$ 1,125.00
Hearing Date: September 27, 2005 1 session	
Total Forum Fees	= \$ 3,375.00

The Panel has assessed \$1,125.00 of the forum fees to Claimant Morgan Stanley DW, Inc. and the remaining \$2,250.00 of the forum fees to Respondent William Herndon.

SEE SUMMARY

Claimant Morgan Stanley DW, Inc. is solely liable for:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 5,200.00
Forum Fees	= \$ 1,125.00
Total Fees	= \$ 7,325.00
Less payments	= \$ 7,325.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent William Herndon is solely liable for:

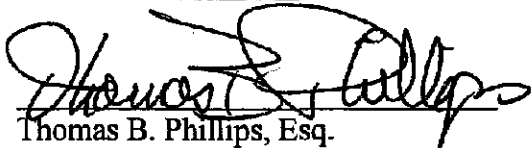
Forum Fees	= \$ 2,250.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 2,250.00

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

ARBITRATION PANEL

Thomas B. Phillips, Esq. - Non-Public Arbitrator, Presiding Chairperson
Christopher Daniel Gryzen - Non-Public Arbitrator
John Burke Garrett - Non-Public Arbitrator

Concurring Arbitrators' Signatures



Thomas B. Phillips, Esq.
Non-Public Arbitrator, Presiding Chairperson



Signature Date

Christopher Daniel Gryzen
Non-Public Arbitrator

Signature Date

John Burke Garrett
Non-Public Arbitrator

Signature Date



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

NASD Dispute Resolution, Inc.
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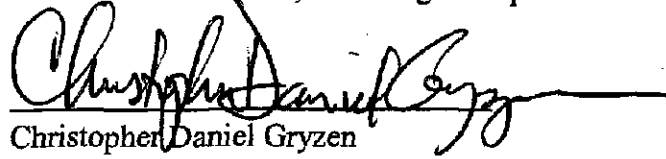
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Concurring Arbitrators' Signatures

Thomas B. Phillips, Esq.
Non-Public Arbitrator, Presiding Chairperson

Signature Date



Christopher Daniel Gryzen
Non-Public Arbitrator

10-4-05
Signature Date

John Burke Garrett
Non-Public Arbitrator

Signature Date

10/10/05 [Signature]
Date of Service (For NASD Dispute Resolution office use only)

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Christopher Daniel Gryzen - Non-Public Arbitrator
John Burke Garrett - Non-Public Arbitrator


Concurring Arbitrators' Signatures

Thomas B. Phillips, Esq.
Non-Public Arbitrator, Presiding Chairperson

Signature Date

Christopher Daniel Gryzen
Non-Public Arbitrator

Signature Date .



John Burke Garrett
Non-Public Arbitrator

10-16-05

Signature Date

10/10/05 C/G

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