

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Claimants

Faris Naimi and Zena Naimi

v.

Case Number: 04-07715  
Hearing Site: Southfield, Michigan

Respondents

Morgan Stanley DW, Inc., and  
Bryan Poirier

And

Counter-Claimant

Morgan Stanley DW, Inc.

v.

Counter-Respondents

Faris Naimi and Zena Naimi

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**NATURE OF DISPUTE**

Customers v. Member and Associated Person and Member v. Customers

**REPRESENTATION OF PARTIES**

Faris Naimi and Zena Naimi, hereinafter collectively referred to as "Counter-Respondents," were represented by Stuart R. Berkowitz, Esq., Law Offices of Stuart R. Berkowitz, LLC, St. Louis, Missouri, and Lawrence M. Elkus, Esq., Law Offices of Lawrence M. Elkus, PLC, Farmington Hills, Michigan.

Morgan Stanley DW, Inc. ("MSDW") and Bryan Poirier ("Poirier") hereinafter collectively referred to as "Respondents," were represented by Raymond W. Henney, Esq., and Michael P. Hindelang, Esq., Honigman Miller Schwartz & Cohen LLP, Detroit, Michigan.

**CASE INFORMATION**

The Statement of Claim was filed on or about November 5, 2004. The Submission Agreement of Faris Naimi and Zena Naimi was signed on or about October 27, 2004.

The Statement of Answer was filed jointly by Respondents on or about December 29, 2004. The Counterclaim was filed by MSDW on or about December 29, 2004. The Submission Agreement of MSDW was signed on or about November 19, 2004. The Submission Agreement of Poirier was signed on or about December 28, 2004.

Claimant filed a Response to MSDW's Counterclaim on or about March 3, 2005.

### **CASE SUMMARY**

Claimants asserted the following causes of action: Respondents' recommendations were unsuitable; MSDW failed to adequately supervise the activities of Poirier; and Respondents' actions violated Michigan's Uniform Securities Act. The causes of action related to Claimants' allegations that Poirier recommended large shorts of oil futures contracts and U.S. Treasuries which were not suitable for Claimants.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimants, at all times, held ultimate control over their portfolio and the transactions effected therein; Claimants assumed the risks of trading in futures and repurchase agreements, including the risk of substantial adverse market movement; and to the extent Claimants failed to make profitable investment choices and/or failed to use due diligence in monitoring their own affairs, such failures bar their claims under the doctrines of waiver, estoppel, ratification and unclean hands.

MSDW, asserted a counterclaim against Claimants for failure to repay a debit balance.

Claimants asserted that Respondents fraudulently misrepresented their expertise in commodities futures and U.S. Treasuries thereby inducing Claimants to enter into the Margin Agreement, thereby rendering the agreement void; and that MSDW abused its discretion by liquidating Claimants' accounts and improperly calculated the margin debit.

### **RELIEF REQUESTED**

Claimants requested an award in the amount of \$910,000.00, plus interest, costs, attorneys' fees, and any other fees the panel deemed just and proper.

Respondents requested that the claims asserted against them be dismissed in their entirety and that they be awarded their costs and that Poirier's CRD be expunged of all references to this matter, and any other relief the panel deemed appropriate. In its Counter-Claim, MSDW requested \$186,372.00, plus interest, attorneys' fees, costs, and any and all further relief the panel deemed just and proper.

### **OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

### **AWARD**

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

- 1.) Claimants' claims, each and all are denied and dismissed with prejudice;
- 2.) Counter-Respondents, Faris Naimi and Zena Naimi are jointly and severally liable for and shall pay to Counter-Claimant MSDW the amount of \$186,372.00 in damages;
- 3.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 4.) Any relief not specifically enumerated, including attorneys' fees and expungement, is hereby denied with prejudice.

### **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	= \$ 375.00
Counterclaim filing fee	= \$ 1,000.00

#### **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 is Morgan Stanley DW, Inc.

Member surcharge	= \$ 2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 4,000.00

#### **Forum Fees and Assessments**

The Panel has assessed forum fees for each hearing session conducted and each decision rendered on a discovery-related motion on the papers. A hearing 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:

One (1) Pre-hearing session with Panel x \$1,200.00	= \$ 1,200.00
Pre-hearing conference: March 10, 2005 1 session	
Six (6) Hearing sessions x \$1,200.00	= \$ 7,200.00
Hearing Dates: October 18, 2005 2 sessions	
October 19, 2005 2 sessions	
October 20, 2005 2 sessions	
Total Forum Fees	= \$ 8,400.00

The Arbitration Panel has assessed \$4,200.00 of the forum fees jointly and severally to Faris Naimi and Zena Naimi.

The Arbitration Panel has assessed \$4,200.00 of the forum fees jointly and severally to Morgan Stanley DW, Inc., and Bryan Poirier.

#### Fee Summary

Claimants, Faris Naimi and Zena Naimi, are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 4,200.00
Total Fees	= \$ 4,575.00
Less payments	= \$ 1,575.00
Balance Due NASD Dispute Resolution	= \$ 3,000.00

Respondent, Morgan Stanley DW, Inc., is liable for:

Counter-Claim Filing Fee	= \$ 1,000.00
Member Fees	= \$ 7,000.00
Total Fees	= \$ 8,000.00
Less payments	= \$ 8,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents, Morgan Stanley DW, Inc., and Bryan Poirier, are jointly and severally liable for:

Forum Fees	= \$ 4,200.00
Total Fees	= \$ 4,200.00
Less payments	= \$ 1,875.00
Balance Due NASD Dispute Resolution	= \$ 2,325.00

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

**ARBITRATION PANEL**

David L. Tornga, Esq. - Public Arbitrator, Presiding Chair  
Patrick R. Sughrue, Esq. - Public Arbitrator  
Kenneth Rochlen - Non-Public Arbitrator

**Concurring Arbitrators:**

/s/ David L. Tornga, Esq.  
David L. Tornga, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

/s/ Patrick R. Sughrue, Esq.  
Patrick R. Sughrue, Esq.  
Public Arbitrator

10/24/05  
Signature Date

/s/ Kenneth R. Rochlen  
Kenneth Rochlen  
Non-Public Arbitrator

10/24/05  
Signature Date

10/24/05  
Date of Service (For NASD office use only)


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