
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Morgan Stanley DW, Inc.

Case Number: 04-08006

Name of the Respondent
Bernard J. Zarnesky

Hearing Site: Boca Raton, Florida

Nature of the Dispute: Member vs. Associated Person.

REPRESENTATION OF PARTIES

For Morgan Stanley DW, Inc. ("MSDW"), hereinafter referred to as "Claimant": Diane C. Fischer, Esq., Kane and Fischer, Ltd., Chicago, Illinois.

Bernard J. Zarnesky, hereinafter referred to as "Respondent", did not appear.

CASE INFORMATION

Statement of Claim filed on or about: November 19, 2004.

Claimant signed the Uniform Submission Agreement: November 11, 2004.

Respondent did not file a Statement of Answer.

Respondent did not file an executed Uniform Submission Agreement.

Claimant's Motion to Bar Respondent from Presenting Facts or Defenses and Motion for Telephonic Hearing filed on or about: May 20, 2005.

CASE SUMMARY

Claimant asserted the cause of action of breach of promissory note. The cause of action relates to Respondent's failure to repay a promissory note after his employment with Claimant terminated.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$210,000.00, representing the principle balance due and owing under the note; interest in the amount of \$8,306.61, representing the amount accrued during the term of the note at a rate of 4% per annum; interest at a rate of 4% per annum on the balance due and owing under the note from the date of default to the date of payment; costs; attorneys' fees; and, any and all further relief that the Panel deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement, but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and is bound by the determination of the Panel on all issues submitted.

Respondent did not participate in the telephonic evidentiary hearing. Upon review of the file and the representations made by Claimant, the Panel determined that Respondent was properly served with the Statement of Claim, received due notice of the telephonic hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code.

On or about June 21, 2005, the Panel issued an Order granting Claimant's Motion for Telephonic Hearing.

During the telephonic evidentiary hearing held on June 28, 2005, the Panel granted Claimant's Motion to Bar Respondent from Presenting Facts or Defenses.

AWARD

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

Respondent is liable and shall pay to Claimant compensatory damages in the amount of \$210,000.00, plus interest accruing from May 14, 2003 through May 11, 2004 in the amount of \$8,306.61, and additional interest accruing from May 11, 2004 through June 28, 2005 in the amount of \$9,503.13.

Respondent is liable and shall pay to Claimant attorneys' fees in the amount of \$8,805.00, pursuant to the terms of the promissory note.

Respondent is liable and shall pay to Claimant costs in the amount of \$7,520.07.

Any and all claims for relief not specifically addressed herein are 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

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, MSDW is a member firm and a party.

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

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were incurred in this matter.

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. 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:

One (1) Pre-hearing session with the Panel @ \$1,125.00/session	= \$1,125.00
Pre-hearing conference: March 29, 2005 1 session	
One (1) Hearing session @ \$1,125.00	= \$1,125.00
Hearing Date: June 28, 2005 1 session	
Total Forum Fees	= <u>\$2,250.00</u>

The Panel assessed the total forum fees of \$2,250.00 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 not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred in this matter.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$1,000.00
<u>Member Fees</u>	= <u>\$5,200.00</u>
Total Fees	= \$6,200.00
<u>Less payments</u>	= <u>\$6,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent, is solely liable for:

Forum Fees	= \$2,250.00
Total Fees	= \$2,250.00
<u>Less payments</u>	= <u>\$ 0.00</u>
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

Randi Perry Spallina, Esq.	-	Non-Public Arbitrator, Presiding Chairperson
Arnold Levine, Esq.	-	Non-Public Arbitrator
Mark Sidell	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/
Randi Perry Spallina, Esq.
Non-Public Arbitrator, Presiding Chairperson

July 1, 2005
Signature Date

/s/
Arnold Levine, Esq.
Non-Public Arbitrator

June 30, 2005
Signature Date

/s/
Mark Sidell
Non-Public Arbitrator

June 30, 2005
Signature Date

July 1, 2005
Date of Service (For NASD Dispute Resolution office use only)

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Arbitration No. 04-08006
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No administrative costs were incurred in this matter.

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Respondent, is solely liable for:

Forum Fees	= \$2,250.00
Total Fees	= \$2,250.00
Less payments	= \$ 0.00
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Randi Perry Spallina
Randi Perry Spallina, Esq.
Non-Public Arbitrator, Presiding Chairperson

7-1-05
Signature Date

Arnold Levine, Esq.
Non-Public Arbitrator

Signature Date

Mark Sidell
Non-Public Arbitrator

Signature Date

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Less payments	= \$ 0.00
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Non-Public Arbitrator, Presiding Chairperson

Arnold Levine, Esq.
Non-Public Arbitrator

Mark Sidell
Non-Public Arbitrator

Signature Date

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Signature Date

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Respondent, is solely liable for:

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Less payments	= \$ 0.00
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Non-Public Arbitrator, Presiding Chairperson

Signature Date

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Non-Public Arbitrator

Signature Date



Mark Sidell
Non-Public Arbitrator



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