

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Edward M. Mohr, Jr.

and

04-08689

Chicago, Illinois

Name of Respondents

Morgan Stanley DW Inc.
Robert William Welnhofner

Nature of the Dispute: Customer vs. Member and Associated Person.

REPRESENTATION OF PARTIES

Edward M. Mohr, Jr. ("**Claimant**") was represented by Laurence M. Landsman, Esq. and Alan F. Block, Esq., Block & Landsman, Chicago, Illinois.

Morgan Stanley DW Inc. ("**Respondent MSDW**") and Robert William Welnhofner ("**Respondent Welnhofner**") hereinafter referred to as ("**Respondents**") were represented by Bruce Lewitas, Esq., Lewitas and Associates, Chicago, Illinois.

CASE INFORMATION

The Statement of Claim was filed on or about December 27, 2004. Amended Statement of Claim was filed on or about April 6, 2005. Claimant's Response in Opposition to Respondents' Motions to Dismiss was filed on or about June 2, 2005. Submission Agreement of Claimant Edward M. Mohr, Jr. was signed on December 9, 2004.

Respondents' Joint Statement of Answer and Respondents' Motion to Dismiss were filed by Respondents Morgan Stanley DW Inc. and Robert William Welnhofner on or about March 30, 2005. Morgan Stanley's Second Motion to Dismiss was filed on or about May 27, 2005. Submission Agreement of Respondent Morgan Stanley DW Inc. was signed on January 25, 2005.

Submission Agreement of Respondent Robert William Welnhofner was signed on June 23, 2005.

CASE SUMMARY

Claimant asserted the following causes of action: violation of Rule 10b-5 of the Securities and Exchange Act of 1934; negligence; breach of contract; breach of fiduciary duty; failure to supervise;

controlling person liability; and violation of the Illinois Consumer Fraud Act. Specifically, Claimant alleged that:

Welnhofer recommended and encouraged Mohr to borrow substantial sums from Morgan Stanley on margin to be used for non-investment purposes. In doing so, Welnhofer not only failed to disclose the significant risks associated with such use of margin, he failed to disclose his direct, personal financial interest in the increase in Mohr's margin debt

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated:

Claimant's "failure to protect" theory is nothing more than a transparent effort to retain significant profits he earned engaging in the identical activity that ultimately caused his losses. His assertion that he is entitled to \$800,000 bears this out, since on a net basis, Claimant lost not a penny. More notable that what is present in the Statement of Claimant is what it does *not* allege. Claimant in no way, shape or form claims to have been a conservative investor nor does he allege that Respondents were responsible for his acquisition of a concentrated position in BEA Systems, the investment at issue in this matter. In fact, Claimant expressly acknowledges that BEA Systems was his own idea. Further, Claimant does not allege that Respondents recommended that he hold BEA Systems, rather the claim is merely that Respondents failed to "protect" the position.

RELIEF REQUESTED

Claimant requested an award in the amount of \$800,000, or in such amount to be proven at the hearing; reasonable attorneys' fees and expenses, including forum fees; punitive damages of \$100,000; and all other relief that the Panel deems just and fair.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. At the hearing, Respondent Welnhofer requested that this matter be expunged from his CRD records.

OTHER ISSUES CONSIDERED & DECIDED

By letter dated July 18, 2005, the parties were advised of the Arbitration Panel's decision to deny the Motion to Dismiss and Second Motion to Dismiss filed on behalf of Respondents.

At the conclusion of Claimant's case, Respondents asserted a Motion for Directed Verdict. After considering the arguments of the parties and the evidence presented, the Arbitration Panel denied the Motion.

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 the NASD Dispute Resolution (the "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. The claims asserted in this matter are denied in their entirety.
2. The request for expungement is denied.
3. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees, not specifically awarded or otherwise provided for above.

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

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. In this matter, the member firm(s) is Morgan Stanley DW Inc.

Member surcharge	\$ 2,250.00
Pre-hearing process fee	\$ 750.00
Hearing process fee	\$ <u>4,000.00</u>

Total Member Fees \$ 7,000.00

Forum Fees and Assessments

The Arbitration Panel has assessed forum fees for each session conducted or 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:

1	Decisions on discovery-related motions on the papers by one arbitrator	@	\$200.00	\$	200.00
2	Pre-hearing session(s) with Panel	@	1,200.00	\$	2,400.00
	May 10, 2005	1	session		
	July 27, 2005	1	session		
5	Hearing sessions	@	1,200.00	\$	6,000.00
	January 18, 2006	2	sessions		
	January 19, 2006	2	sessions		
	January 20, 2006	1	session		
	Total Forum Fees			\$	8,600.00

The Arbitration Panel has assessed \$4,300.00 of the forum fees to Edward M. Mohr, Jr.
The Arbitration Panel has assessed \$4,300.00 of the forum fees to Morgan Stanley DW Inc.

Fee Summary

Claimant, Edward M. Mohr, Jr., is liable for:

Initial Filing Fee	= \$	375.00
<u>Forum Fees</u>	= \$	4,300.00
Total Fees	= \$	4,675.00
<u>Less payments</u>	= \$	-1,575.00
Balance Due NASD Dispute Resolution	= \$	3,100.00

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

Member Fees	= \$	7,000.00
<u>Forum Fees</u>	= \$	4,300.00
Total Fees	= \$	11,300.00
<u>Less payments</u>	= \$	-7,000.00
Balance Due NASD Dispute Resolution	= \$	4,300.00

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Irving A. Chesler, J.D. - Public Arbitrator, Presiding Chair
Colleen Grace, Esq. - Public Arbitrator
Jerome Stern - Non-Public Arbitrator

Concurring Arbitrators:

Irving A. Chesler

Irving A. Chesler, J.D.
Public Arbitrator, Presiding Chair

1/20/06
Signature Date

Colleen Grace

Colleen Grace, Esq.
Public Arbitrator

1/20/06
Signature Date

Jerome Stern

Jerome Stern
Non-Public Arbitrator

1-20-06
Signature Date

1/23/06
Date of Service (For NASD office use only)