

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimants

James R. "Jim" Merrick and Marieda Joyce Merrick

and

Case Number: 05-00443
Hearing Site: Houston, Texas

Respondent

Morgan Stanley DW, Inc.

NATURE OF DISPUTE

Customers v. Member

REPRESENTATION OF PARTIES

James R. "Jim" Merrick and Marieda Joyce Merrick ("**Claimants**") were represented by Rosalind M. Robertson, Esq., and Sean M. Keane, Esq., Simmons Cooper LLC, East Alton, Illinois.

Morgan Stanley DW, Inc. ("**Morgan Stanley**" or "**Respondent**") was represented by James J. Fontanilla, Esq., Morgan Stanley DW, Inc., San Francisco, California.

CASE INFORMATION

The Statement of Claim was filed on or about January 27, 2005. The Submission Agreement of Claimants was signed on or about July 16, 2004. Claimants' Amended Statement of Claim was filed on or about October 19, 2005.

The Statement of Answer was filed by Respondent Morgan Stanley on or about April 11, 2005. The Submission Agreement of Respondent Morgan Stanley was filed on or about March 29, 2005.

CASE SUMMARY

Claimants asserted the following causes of action: violation of the Texas Deceptive Practices-Consumer Fraud Act; breach of fiduciary duty; breach of contract; violation of the Securities Exchange Act; violation of the Texas Securities Act; and negligence. The causes of action related to the recommendations and purchase of Morgan Stanley Dean Witter Dividend Growth Fund Class B. Claimants alleged that Respondent recommended

equity-based mutual funds without explaining the risks involved, which led to losses in their account.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant failed to state any cause of action upon which relief may be granted and, therefore, their Statement of Claim must be dismissed; Claimants, by their own conduct, waived any and all claims they may have had against Morgan Stanley; and Claimants' claims are barred as a result of Claimants' failure to minimize or mitigate their alleged damages.

RELIEF REQUESTED

Claimants requested an award in the amount of \$123,000.00 in compensatory damages, plus punitive damages, costs and attorneys' fees and other relief the panel deemed just and proper.

Respondent requested that the claims asserted against it be denied in their entirety, enter an award in their favor and other relief the panel deemed just and proper.

OTHER ISSUES CONSIDERED & DECIDED

Claimants' Motion for Leave to File an Amended Statement of Claim was filed on or about October 19, 2005.

Respondent's Response to Claimants' Motion for Leave was filed on or about October 28, 2005.

On or about October 31, 2005, the Panel granted Claimants' Motion for Leave to Amend the Statement of Claim.

Respondent's Motion to Strike which is incorporated in Respondent's Answer to the Statement of Claim, was filed on or about April 11, 2005.

Respondent's Motion to Dismiss Texas Deceptive Trade Practices Claim ("DTPA") was filed on or about June 27, 2005.

Claimants' Objections and Responses to Respondent's Motion to Strike Portions of the Statement of Claim and Motion to Dismiss were filed on or about July 19, 2005.

On or about August 2, 2005, the Panel entered an order granting Respondent's Motion to Strike all reference to customers and transactions that were not clients of broker, Dottie Nation. The panel also granted Respondent's Motion to Dismiss under the DTPA.

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) Respondent, Morgan Stanley DW, Inc., is liable for and shall pay to Claimants, James R. "Jim" Merrick and Marieda Joyce Merrick, the sum of \$16,601.00 in compensatory damages;
- 2) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 3) Any relief not specifically enumerated, including punitive damages and attorneys' fees, is hereby denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim 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 is Morgan Stanley DW, Inc.

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

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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 discovery-related motions on the papers with (1) One arbitrator @ \$200.00 Respondent submitted one (1) discovery-related motion	= \$ 200.00
Two (2) Pre-hearing sessions with Panel x \$1,125.00 Pre-hearing conferences: June 29, 2005 1 session July 28, 2005 1 session	= \$2,250.00
Four (4) Hearing sessions x \$1,125.00 Hearing Dates: February 13, 2006 2 sessions February 14, 2006 2 sessions	= \$4,500.00
Total Forum Fees	= \$6,950.00

The Arbitration Panel has assessed \$3,475.00 of the forum fees jointly and severally to James R. "Jim" Merrick and Marieda Joyce Merrick.

The Arbitration Panel has assessed \$3,475.00 of the forum fees to Morgan Stanley DW, Inc.

Fee Summary

Claimants, James R. "Jim" Merrick and Marieda Joyce Merrick, are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$3,475.00
Total Fees	= \$3,775.00
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$2,350.00

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

Member Fees	= \$5,200.00
Forum Fees	= \$3,475.00
Total Fees	= \$8,675.00
Less payments	= \$5,850.00

Balance Due NASD Dispute Resolution = \$2,825.00

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

ARBITRATION PANEL

Antoinette M. Romano - Public Arbitrator, Presiding Chair
Raymond C. Kerr, Esq. - Public Arbitrator
James E. Lane - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Antoinette M. Romano
Antoinette M. Romano
Public Arbitrator, Presiding Chair

02/18/06
Signature Date

/s/ Raymond C. Kerr, Esq.
Raymond C. Kerr, Esq.
Public Arbitrator

02/16/06
Signature Date

/s/ James E. Lane
James E. Lane
Non-Public Arbitrator

02/17/06
Signature Date

02/21/06
Date of Service (For NASD office use only)

Balance Due NASD Dispute Resolution

= \$2,825.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 0330(g) of the Code.

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Raymond C. Kerr, Esq. - Public Arbitrator
James E. Lane - Non-Public Arbitrator

Concurring Arbitrators:

Antoinette M. Romano

Antoinette M. Romano
Public Arbitrator, Presiding Chair

2/18/2006
Signature Date

Raymond C. Kerr, Esq.
Public Arbitrator

Signature Date

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Public Arbitrator, Presiding Chair

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