

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Leonel Abay

Case Number: 05-00444

Names of the Respondents
Morgan Stanley, a foreign corporation
David Louis Burg, an Individual

Hearing Site: Boca Raton, Florida

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

REPRESENTATION OF PARTIES

For Leonel Abay, hereinafter referred to as "Claimant": Cheryl L. Reiss, Esq. and Guy Bailey, Esq., Bailey & Dawes, L.C., Miami, Florida.

For Morgan Stanley, ("MS") and David Louis Burg ("Burg"), hereinafter collectively referred to as "Respondents": Peter W. Homer, Esq. and Christopher King, Esq., Homer & Bonner, Miami, Florida.

CASE INFORMATION

Statement of Claim filed on or about: January 27, 2005.

Claimant signed the Uniform Submission Agreement: January 11, 2005.

Statement of Answer filed by Respondents on or about: March 30, 2005.

Respondent MS signed the Uniform Submission Agreement: February 14, 2005.

Respondent Burg signed the Uniform Submission Agreement: March 11, 2005.

Motion to Dismiss Claimant's Claim filed by Respondents on or about: July 25, 2005.

Response to Respondents' Motion to Dismiss Claimant's Claim filed by Claimant on or about: September 16, 2005.

CASE SUMMARY

Claimant asserted the following causes of action: 1) breach of fiduciary duty; 2) failure to supervise in violation of 15 U.S.C Sections 77o, 78t and common law; 3) violation of Section 10(b), 15 U.S.C. § 78j (b) and SEC Rule 10b (5), 17 C.F.R. § 10b-5; 4) violation of Section 15(c) of the Securities Exchange Act of 1934; and, 5) gross negligence. The causes of action relate to Claimant's investments in, including but not limited to AIM Value fund, MSDW American Opportunities fund and Pilgrim International Small Cap fund.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim, and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested the following: 1) compensatory damages of approximately \$300,000.00 under common law and under Securities Exchange Act of 1934; 2) compensatory, actual, statutory and general damages, 3) pre-judgment interest, and costs; 4) punitive damages; 5) attorney's fees; 6) costs; and 7) such other and further statutory, legal and equitable relief as is proper under the circumstances.

Respondents requested that : 1) all claims asserted by Claimant be denied in their entirety; and, 2) the Panel order this matter be expunged from David Louis Burg's NASD Central Registration Depository ("CRD") record. Respondents reserve the right to seek attorney's fees and costs incurred in defense of this action in a court of competent jurisdiction.

OTHER ISSUES CONSIDERED AND DECIDED

On or about September 19, 2005 the Panel denied Respondents' Motion to Dismiss.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

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

All of Claimant's claims for relief are denied.

The Panel recommends the expungement of all references to the above-captioned arbitration from Respondent Burg's public and non-public registration records maintained by the NASD CRD, with the understanding that, pursuant to NASD Notice to Members 04-16, Respondent Burg must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130, the Panel has made the following findings of fact:

- (1) The claims, allegations or information with regard to Respondent Burg are false.
- (2) The evidence presented did not support the claim against Respondent Burg.

Any other claims not addressed herein, including Claimant's requests for punitive damages and attorneys' fees, are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (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	= \$ 300.00
--------------------------	-------------

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, Respondent MS is a party and a member firm.

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

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournment fees assessed during these proceedings.

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:

There were no three-day cancellation fees assessed during these proceedings.

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.

There were no injunctive relief fees assessed during these proceedings.

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 the Panel @ \$1,125.00/session = \$ 2,250.00
Pre-hearing conferences: June 20, 2005 1 session
September 19, 2005 1 session

One (1) Decision on discovery-related motion on the papers
with (1) one arbitrator @ \$200.00 = \$ 200.00
Claimant submitted one (1) discovery-related motion

Six (6) Hearing sessions with the Panel @ \$1,125.00/session = \$ 6,750.00
Hearing Dates: September 19, 2006 2 sessions
September 20, 2006 2 sessions
September 21, 2006 2 sessions

Total Forum Fees = \$9,200.00

The Panel has assessed the total forum fees of \$9,200.00 to Respondents, jointly and severally.

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.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Total Fees	= \$ 300.00
Less payments	= \$ 300.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent MS is solely liable for:

Member Fees	= \$ 5,200.00
Total Fees	= \$ 5,200.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents MS and Burg are jointly and severally liable for:

Forum Fees	= \$ 9,200.00
Total Fees	= \$ 9,200.00
Less payments	= \$ 1,050.00
Balance Due NASD Dispute Resolution	= \$ 8,150.00

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

ARBITRATION PANEL

Nancy J. Cliff, Esq.
Joel F. Martineau.
Frederick T. W. Reed

Public Arbitrator, Presiding Chairperson
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/
Nancy J. Cliff, Esq.
Public Arbitrator, Presiding Chairperson

September 22, 2006
Signature Date

/s/
Joel F. Martineau
Public Arbitrator

September 22, 2006
Signature Date

/s/
Frederick T. W. Reed
Non-Public Arbitrator

September 25, 2006
Signature Date

September 25, 2006

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

ARBITRATION PANEL

Nancy J. Cliff, Esq.
Joel F. Martineau.
Frederick T. W. Reed

Public Arbitrator, Presiding Chairperson
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures



Nancy J. Cliff, Esq.
Public Arbitrator, Presiding Chairperson

9/22/06
Signature Date

Joel F. Martineau
Public Arbitrator

Signature Date

Frederick T. W. Reed
Non-Public Arbitrator

Signature Date

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

ARBITRATION PANEL

Nancy J. Cliff, Esq.
Joel F. Martineau.
Frederick T. W. Reed

Public Arbitrator, Presiding Chairperson
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

Nancy J. Cliff, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Joel F. Martineau
Public Arbitrator

9/22/06

Signature Date

Frederick T. W. Reed
Non-Public Arbitrator

Signature Date

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

ARBITRATION PANEL

Nancy J. Cliff, Esq.
Joel F. Martineau.
Frederick T. W. Reed

Public Arbitrator, Presiding Chairperson
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

Nancy J. Cliff, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Joel F. Martineau
Public Arbitrator

Signature Date



Frederick T. W. Reed
Non-Public Arbitrator



Signature Date

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