

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

The Robert Seltzer Trust of 1993, Claimant v. Morgan Stanley DW Inc., Respondent

Case Number: 05-01535

Hearing Site: Los Angeles, California

Nature of the Dispute: Customer v. Member

REPRESENTATION OF PARTIES

For Claimant:

Eric Woosley, Esq.
Law Offices of Zilinskas & Woosley
Santa Barbara, California

For Respondent:

Ron Wood, Esq.
Christine A. Pham, Esq.
The Wood Group
Los Angeles, California

CASE INFORMATION

Statement of Claim filed: March 18, 2005

Claimant's Uniform Submission Agreement signed: Undated

Statement of Answer and Motion for a More Definite Statement filed: May 17, 2005

Respondent's Uniform Submission Agreement signed: June 16, 2005

CASE SUMMARY

Claimant alleged negligent misrepresentation, negligence, and failure to supervise. Claimant's allegations involved Respondent's broker's representation that if Claimant purchased recently issued Morgan Stanley IPOs, held them for a short period, and then sold them, Claimant would receive preferential treatment for other IPOs. "Claimant was told that the system surveyed accounts at the middle and end of each month to determine the amount of new issue stock that was in an account. The more stock translated to more access to IPOs for that account. The

actual holding time for the stock would only be a few days, just long enough for the computer survey to take place, [after which the stocks would be sold avoiding] major swings in value from purchase to sale." Claimant alleged that the stocks were held longer than the agreed upon time period, causing losses in the account. Claimant also alleged that only very limited preferential treatment was received.

Respondent denied the allegations of wrongdoing set forth in Claimant's Statement of Claim.

RELIEF REQUESTED

Claimant requested unspecified compensatory damages, unspecified exemplary damages, pre-judgment interest, and costs.

Respondent requested dismissal of the Claimant's Statement of Claim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Morgan Stanley DW, Inc. did not file with NASD Dispute Resolution a properly executed submission agreement but is required to submit to arbitration pursuant to the Code, and having answered the claim, and having appeared at the hearing, is bound by the determination of the Panel on all issues submitted.

On April 12, 2005, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators. Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

On November 2, 2005, Respondent filed a Motion to Dismiss Claimant's claims. Claimant filed an opposition thereto on November 29, 2005. On December 19, 2005, a telephonic pre-hearing conference was held, attended by Claimant's counsel, Eric Woosley, Esq., Respondent's counsel, Ronald Wood, Esq., and the Panel. After due deliberation, the Panel denied the motion.

On February 22, 2006, Claimant filed a Motion to Strike or, alternatively, Postpone the hearing. On February 24, 2006, Respondent filed a Motion for Sanctions. Claimant filed an opposition to Respondent's motion on February 27, 2006. On February 28, 2006, a telephonic pre-hearing conference was held, attended by Claimant's counsel, Eric Woosley, Esq., Respondent's counsel, Ronald Wood, Esq., and the Panel. After due deliberation, the Panel denied Claimant's and Respondent's motions, respectively.

On February 28, 2006, after a Panel member suddenly withdraw due to medical emergency, the parties stipulated to move forward with two arbitrators for the hearing on the merits.

On March 1, 2006, after Claimant rested its case, Respondent moved the Panel to dismiss Claimant's claims. After consideration of the witnesses and testimony presented by Claimant, and the parties' respective arguments for and against the motion, the Panel denied the motion.

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

- 1) Respondent is liable to and shall pay Claimant the sum of \$50,000.00 in compensatory damages.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) All other relief requested and not expressly granted, including Claimant's request for punitive damages, is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee = \$ 250.00

Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Morgan Stanley DW, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$1,500.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$2,200.00
Total Member Fees	= \$4,450.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

One (1) Pre-hearing conference session with a single arbitrator @ \$450.00/session = \$ 450.00
Pre-hearing conference: February 13, 2006 1 session

Three (3) Pre-hearing conference sessions with the Panel @ \$1,000.00/session = \$3,000.00
Pre-hearing conferences: July 13, 2005 1 session
December 19, 2005 1 session
February 28, 2006 1 session

Two (2) Hearing sessions @ \$1,000.00/session	= \$2,000.00
Hearings: March 1, 2006 2 sessions	
Total Forum Fees	= \$5,450.00

1. The Panel assessed \$2,725.00 of the forum fees to Claimant.
2. The Panel assessed \$2,725.00 of the forum fees to Respondent.

Fee Summary

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 250.00
<u>Forum Fees</u>	<u>= \$ 2,725.00</u>
Total Fees	= \$ 2,975.00
<u>Less payments</u>	<u>= \$(1,425.00)</u>
Balance Due NASD Dispute Resolution	= \$ 1,550.00

2. Respondent is charged with the following fees and costs:

Member Fees	= \$ 4,450.00
<u>Forum Fees</u>	<u>= \$ 2,725.00</u>
Total Fees	= \$ 7,175.00
<u>Less payments</u>	<u>= \$(4,450.00)</u>
Balance Due NASD Dispute Resolution	= \$ 2,725.00

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

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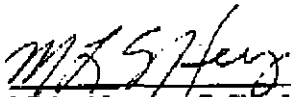
ARBITRATION PANEL

Michael Leymon Coffey, MPH
Debra Brothers Self, Esq.

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Public Arbitrator, Presiding Chair
Non-Public Arbitrator

Concurring Arbitrators' Signatures



Michael Leymon Coffey, MPH
Chair, Public Arbitrator

March 2, 2006

Signature Date

Debra Brothers Self, Esq.
Non-Public Arbitrator

Signature Date

March 2, 2006
Date of Service

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Michael Leymon Coffey, MPH
Debra Brothers Self, Esq.

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Public Arbitrator, Presiding Chair
Non-Public Arbitrator

Concurring Arbitrators' Signatures

Michael Leymon Coffey, MPH
Chair, Public Arbitrator

Signature Date


Debra Brothers Self, Esq.
Non-Public Arbitrator

3/2/06
Signature Date

March 2, 2006
Date of Service