

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Joseph C. Fenech, individually and as Trustee, Joseph C.
Fenech P.C. Profit Sharing Plan Dated 5/7/98

and

05-01679
Chicago, Illinois

Name of Respondents

Morgan Stanley DW Inc.
Robert Jon Herboth

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

REPRESENTATION OF PARTIES

Joseph C. Fenech, individually and as Trustee Joseph C. Fenech P.C. Profit Sharing Plan Dated 5/7/98 ("**Claimant**") was represented by Erwin Cohn, Esq., Cohn & Cohn, Chicago, Illinois.

Morgan Stanley DW Inc. ("**Respondent MSDW**") and Robert Jon Herboth ("**Respondent Herboth**") hereinafter referred to as ("**Respondents**") were represented by Melissa M. Maccarone, Esq., Morgan Stanley DW Inc., San Francisco, California.

CASE INFORMATION

The Statement of Claim was filed on or about March 30, 2005. Submission Agreement of Claimant Joseph C. Fenech, individually and as Trustee Joseph C. Fenech P.C. Profit Sharing Plan Dated 5/7/98 was signed on December 31, 2004.

Respondents' Answer and Affirmative Defenses was filed by Respondent Morgan Stanley DW Inc. and Robert Jon Herboth on or about June 21, 2005. Submission Agreement of Respondent Morgan Stanley DW Inc. was signed on June 14, 2005 by Melissa M. Maccarone, Esq. Submission Agreement of Respondent Robert Jon Herboth was signed on June 10, 2005.

CASE SUMMARY

Claimant alleged that

Robert Herboth placed his own interests and the interests of Morgan Stanley Dean Witter ahead of those of Claimant. Herboth churned Claimant's accounts, engaged in unauthorized purchases and sales and made wholly unsuitable investments in Claimant's account. Herboth's motivation was simply to generate compensation for himself and Morgan Stanley Dean Witter. Robert Herboth completely disregarded Claimant's investment objectives. Morgan Stanley Dean Witter negligently failed to detect these violations. Because of Respondent Morgan Stanley Dean Witter's action, omissions, misrepresentations, negligence, breaches of duties and failure to properly supervise, MORGAN STANLEY DEAN WITTER, along with Herboth, have become liable to Claimant on a number of legal grounds, including but not limited to, the following:

1. excessive trading and churning;
2. sale of unsuitable investments;
3. unauthorized transactions;
4. failure to supervise;
5. income from the defaulted bonds;
6. loss of portfolio [sic]
7. improper structuring and risk associated with this improper structure;
8. misrepresentations and omissions;
9. violations of Illinois Blue Sky Laws and NASD Conduct rules and conduct rules of the NYSE;
10. breach of contract;
11. negligence;
12. constructive fraud/breach of fiduciary duty;
13. common law fraud; and
14. violations of other Illinois consumer protection statutes.

Claimant's allegations relate to certain investments, including notes of Kemper Corporation, Northwest United, and UAL Corporate Capital One 13.25%.

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

The losses in Mr. Fenech's 019 Account can be attributed to his purchase of UAL preferred securities on September 5, 2001 – six days before the September 11 attack on the World Trade Center. Contrary to Mr. Fenech's allegations, however, his broker's recommendation that he acquire UAL was suitable. The UAL holdings were part of portfolio of preferred securities and represented less than 5% of Mr.

Fenech's total holdings when acquired. In addition, Mr. Fenech approved the acquisition of UAL before it was acquired.

Neither Morgan Stanley nor Mr. Herboth could have predicted the events of September 11. Nor could anyone have predicted, on September 5, the steep decline in value of Mr. Fenech's UAL holdings. In the weeks and months following September 11, Mr. Fenech's broker recommended that he sell his UAL holdings to limit his losses. Mr. Fenech declined to do so, however, stating that he thought the airline was "too big to fail." Now that the holdings are valueless, however, Mr. Fenech looks to blame Respondents for his losses.

RELIEF REQUESTED

Claimant requested an award in an amount not in excess of \$500,000.00.

Respondents requested that the Panel enter an award in favor of Respondents and order the expungement of the CRD record of Robert Herboth, and award such further relief as the Panel deems just and proper.

OTHER ISSUES CONSIDERED & DECIDED

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 and the post-hearing submissions, if any, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Find in favor of Respondents.
2. 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.
3. 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 = \$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. In this matter, the member firm(s) is Morgan Stanley DW Inc.

Member surcharge	\$	1,700.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	2,750.00
Total Member Fees	\$	5,200.00

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 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 Pre-hearing session(s) with Panel	x	1,125.00	\$	1,125.00
October 12, 2005	1	session		
8 Hearing sessions	x	1,125.00	\$	9,000.00
July 24, 2006	2	sessions		
July 25, 2006	2	sessions		
July 26, 2006	2	sessions		
July 27, 2006	2	sessions		
Total Forum Fees			\$	10,125.00

The Arbitration Panel has assessed \$5,062.50 of the forum fees to Joseph C. Fenech, individually and as Trustee Joseph C. Fenech P.C. Profit Sharing Plan Dated 5/7/98.

The Arbitration Panel has assessed \$5,062.50 of the forum fees to Morgan Stanley DW Inc.

Fee Summary

Claimant, Joseph C. Fenech, individually and as Trustee Joseph C. Fenech P.C. Profit Sharing Plan Dated 5/7/98, is liable for:

Initial Filing Fee	= \$	300.00
<u>Forum Fees</u>	= \$	5,062.50
Total Fees	= \$	5,362.50
<u>Less payments</u>	= \$	-1,425.00
Balance Due NASD Dispute Resolution	= \$	3,937.50

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


Member Fees	= \$	5,200.00
<u>Forum Fees</u>	= \$	5,062.50
Total Fees	= \$	10,262.50
<u>Less payments</u>	= \$	-5,200.00
Balance Due NASD Dispute Resolution	= \$	5,062.50

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Susanne J. Hollander - Public Arbitrator, Presiding Chair
Michael Nathanson, CPA - Public Arbitrator
Jeffrey S. Fannon - Non-Public Arbitrator


Concurring Arbitrators:



Susanne J. Hollander
Public Arbitrator, Presiding Chair

7-28-06

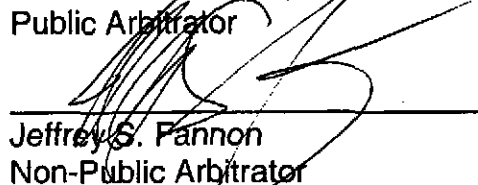
Signature Date



Michael Nathanson, CPA
Public Arbitrator

7-28-06

Signature Date



Jeffrey S. Fannon
Non-Public Arbitrator

7-28-06

Signature Date

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7/31/06

Date of Service (For NASD office use only)