
Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Kenneth G. and Ruth E. Mayher

Case Number: 05-02957

Names of the Respondents

Morgan Stanley DW Inc.

Jonathan Berstein

Craig Norton

Christopher Babinski

Florence Sider

Joseph Adornato

Hearing Site: Boca Raton, Florida

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

REPRESENTATION OF PARTIES

For Kenneth G. and Ruth E. Mayher, hereinafter collectively referred to as "Claimants": Dale Ledbetter, Esq., Adorno & Yoss, Fort Lauderdale, Florida.

For Morgan Stanley DW, Inc. ("MSDW") and Jonathan Berstein ("Berstein"): Doreen S. Young, Esq., Morgan Stanley DW Inc., Tampa, Florida.

Respondents Craig Norton ("Norton"), Christopher Babinski ("Babinski"), Florence Sider ("Sider") and Joseph Adornato ("Adornato") did not appear.

CASE INFORMATION

Statement of Claim filed on or about: June 6, 2005.

Claimants signed the Uniform Submission Agreement: May 31, 2005.

Statement of Answer and Defenses filed by Respondents MSDW and Berstein on or about: August 17, 2005.

Respondent MSDW signed the Uniform Submission Agreement: August 16, 2005.

Respondent Berstein signed the Uniform Submission Agreement: September 22, 2005.

Respondents Norton, Babinski, Sider and Adornato did not file Statements of Answer or executed Uniform Submission Agreements.

CASE SUMMARY

Claimants asserted causes of action for negligence and unauthorized trading. The causes of action relate to the purchase and sale of unspecified equity options, the sale of certain unspecified Fidelity Mutual Funds, and the sub-account allocation of an unspecified Allstate annuity in Claimants' accounts.

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

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$99,094.03 and costs.

Respondents MSDW and Bernstein requested dismissal of the Statement of Claim in its entirety and indicated they will pursue an award of attorney's fees in a court of competent jurisdiction.

Respondents MSDW and Bernstein also requested that all references to this matter be expunged from the NASD Central Registration Depository ("CRD") records of Respondent Bernstein.

OTHER ISSUES CONSIDERED AND DECIDED

On or about August 2, 2005, prior to the appointment of the undersigned arbitrators (the "Panel"), Claimants voluntarily dismissed, without prejudice, all claims against Respondents Babinski, Sider, Adornato and Norton.

On or about March 22, 2006, Claimants and Respondents MSDW and Bernstein filed a proposed Stipulated Award. Thereafter, the Panel granted the parties' request for the entry of a Stipulated Award.

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

AWARD

Pursuant to the parties' agreement, and after consideration of the parties' submissions and representations, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims for relief asserted by Claimants, or that could have been asserted by Claimants, in this matter, including claims under Chapter 517 of the Florida Statutes, are dismissed with prejudice.
2. The Panel recommends the expungement of all references to the above-captioned arbitration from Respondent Bernstein'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 Bernstein must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. 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.
4. Pursuant to Rule 2130, the Panel has made the following findings of fact: (1) the allegations against Respondent Bernstein and the claims, allegations or information with regard to Respondent Bernstein are factually impossible or clearly erroneous; and (2) the claims, allegations or information with regard to Respondent Bernstein are false.

5. The Panel's recommendation is based on several undisputed facts, i.e., that the Claimants authorized every transaction in their MSDW account, that Bernstein did not fail to follow any instructions of the Claimants, and that the Claimants realized a net profit in their accounts in excess of \$200,000.00 and therefore suffered no losses.
6. The parties shall bear their own attorneys' fees and costs, except as set forth below with regard to arbitration/forum fees.
7. The parties have agreed that Respondent MSDW shall pay all outstanding NASD arbitration fees.
8. Any and all claims for relief not specifically addressed herein 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	= \$ 225.00
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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 MSDW is a party and a member firm.

Member surcharge	= \$1,100.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$1,700.00</u>
Total Member Fees	= \$3,550.00

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:

The Panel assessed a three-day cancellation fee of \$300.00 as follows, pursuant to the agreement of the parties:

\$300.00 to Respondent MSDW.

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:

One (1) Pre-hearing sessions with the Panel @ \$750.00/session	= \$ 750.00
Pre-hearing conference: October 11, 2005 1 session	
Total Forum Fees	= \$ 750.00

Pursuant to the agreement of the parties, the Panel has assessed forum fees in the amount of \$750.00 to Respondent MSDW.

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 are 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

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 225.00
Retained Hearing Session Deposit pursuant to Rule 10332(f) of Code	= \$ 750.00
Total Fees	= \$ 975.00
Less Payments	= \$ 975.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent MSDW is solely liable for:

Member Fees	= \$ 3,550.00
Three-Day Cancellation Fees	= \$ 300.00
Forum Fees	= \$ 750.00
Total Fees	= \$ 4,600.00
Less payments	= \$ 3,550.00
Balance Due NASD Dispute Resolution	= \$ 1,050.00

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

ARBITRATION PANEL

Howard A. Rose, Esq.
Charles Hoffman, Esq.
Susan L. Torbin, MS, CFP

Public Arbitrator, Presiding Chairperson
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

_____/s/_____
Howard A. Rose, Esq.
Public Arbitrator, Presiding Chairperson

April 7, 2006
Signature Date

_____/s/_____
Charles Hoffman, Esq.
Public Arbitrator

April 5, 2006
Signature Date

_____/s/_____
Susan L. Torbin, MS, CFP
Non-Public Arbitrator

April 5, 2006
Signature Date

April 7, 2006
Date of Service (For NASD Dispute Resolution office use only)

Apr.

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Non-Public Arbitrator

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Public Arbitrator, Presiding Chairperson

April 7, 2006
Signature Date

Charles Hoffman, Esq.
Charles Hoffman, Esq.
Public Arbitrator

Signature Date

Susan L. Torbin, MS, CFP
Susan L. Torbin, MS, CFP
Non-Public Arbitrator

Signature Date

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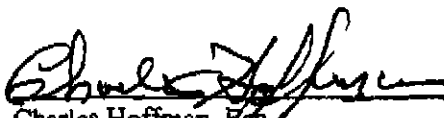
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Public Arbitrator
Non-Public Arbitrator

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Public Arbitrator, Presiding Chairperson

Signature Date



Charles Hoffman, Esq.
Public Arbitrator

4/5/06

Signature Date

Susan L. Torbin, MS, CFP
Non-Public Arbitrator

Signature Date

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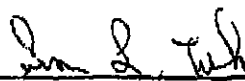
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