

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Case Number: 05-03282

Jay Berkowitz, Pagona Berkowitz,
Larry Berkowitz, Beth Berkowitz,
Jeffrey Berkowitz, Amy Berkowitz,
Joseph A. Berkowitz, and Barbara Berkowitz

Names of the Respondents

Hearing Site: Philadelphia, Pennsylvania

Morgan Stanley DW Inc.,
William Joseph Meagher, Jr., Karl Seiler Murray,
and Anthony Filippello

Nature of the Dispute: Customers vs. Member and Associated Persons.

REPRESENTATION OF PARTIES

Claimants, Jay Berkowitz, Pagona Berkowitz, Larry Berkowitz, Beth Berkowitz, Jeffrey Berkowitz, Amy Berkowitz, Joseph A. Berkowitz, and Barbara Berkowitz, hereinafter collectively referred to as "Claimants", were represented by Alan L. Frank, Esq., Frank, Rosen, Snyder & Moss, LLP, Elkins Park, Pennsylvania.

Respondents, Morgan Stanley DW Inc. ("Morgan Stanley"), William Joseph Meagher, Jr. ("Meagher"), Karl Seiler Murray ("Murray"), and Anthony Filippello ("Filippello"), hereinafter collectively referred to as "Respondents", were represented by Victor Olds, Esq., Morgan Stanley DW, Inc., Purchase, New York and Steven Kobre, Esq., Kobre & Kim, LLP, New York, New York.

CASE INFORMATION

Statement of Claim filed on June 24, 2005.

Claimant Jay Berkowitz signed the Uniform Submission Agreement on July 9, 2005.

Claimant Pagona Berkowitz signed the Uniform Submission Agreement on July 9, 2005.

Claimant Larry Berkowitz signed the Uniform Submission Agreement on June 28, 2005.

Claimant Beth Berkowitz signed the Uniform Submission Agreement on June 28, 2005.

Claimant Jeffrey Berkowitz signed the Uniform Submission Agreement on August 8, 2005.

Claimant Amy Berkowitz signed the Uniform Submission Agreement on August 8, 2005.

Claimant Joseph Berkowitz signed the Uniform Submission Agreement on July 7, 2005.

Claimant Barbara Berkowitz signed the Uniform Submission Agreement on July 7, 2005.

Statement of Answer filed by Respondents on October 4, 2005
Respondents Meagher, Fillipello, and Murray did not file Uniform Submission Agreements with NASD Dispute Resolution.
A representative of Respondent Morgan Stanley executed the Uniform Submission Agreement on October 18, 2005.

Respondent's Motion to Sever was filed on April 10, 2006.
Claimants' Response to Respondents' Motion to Sever Claims was filed on May 2, 2006.

Respondents' Opposition to Claimants Jeffrey and Amy Berkowitz's Notice of Dismissal was filed on July 21, 2006.
Claimants' Response to Respondents' Opposition to Claimants Jeffrey and Amy Berkowitz's Notice of Dismissal was filed on July 25, 2006.

CASE SUMMARY

Claimants asserted the following causes of action, among others: violation of the Securities Exchange Act of 1934, violations of NASD and NYSE suitability rules, violation of the Pennsylvania Securities Act of 1972, violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, breach of contract and the covenant of good faith and fair dealing, churning, breach of fiduciary duty, failure to supervise, *respondeat superior*, and professional negligence. The causes of action relate to various unspecified securities.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: failure to state a cause of action upon which relief may be granted, all transactions were authorized, ratification, estoppel, failure to mitigate, and Respondent Morgan Stanley had adequate supervisory procedures in place.

RELIEF REQUESTED

Claimants in their Statement of Claim requested compensatory damages in excess of \$1,000,000.00, interest, treble damages, attorneys' fees, punitive damages, and such other relief as is just and proper.

Respondents in their Statement of Answer requested that the Statement of Claim be dismissed, costs, and such other and further relief as is just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made by/on behalf of the Claimants, the undersigned Panel determined that Respondents Filippello and Murray have been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondents present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondents Filippello, Murray, and Meagher did not file with NASD Dispute Resolution, properly executed submissions to arbitration but are required to submit to arbitration pursuant to the Code and having answered the claim are bound by the determination of the Panel on all issues submitted.

By Order dated June 8, 2006, the Panel denied the Motion to Sever.

By letter dated August 11, 2006, the parties agreed to allow Claimants Jeffrey and Amy Berkowitz to withdraw their claims with prejudice.

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.

AWARD

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

1. All claims against Respondents are denied in their entirety;
2. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and
3. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

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	= \$ 500.00
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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 firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Respondent Morgan Stanley is a party.

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$ 5,000.00</u>
Total Member Fees	= \$ 8,550.00

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 Panel @ \$1,200.00	= \$ 2,400.00
Pre-hearing conferences: January 9, 2006	1 session
June 6, 2006	1 session

Sixteen (16) Hearing sessions @ \$1,200.00	= \$19,200.00
Hearing Dates:	
July 31, 2006	2 sessions
August 1, 2006	2 sessions
August 2, 2006	2 sessions
August 3, 2006	2 sessions
August 4, 2006	2 sessions
August 31, 2006	2 sessions
September 1, 2006	1 session
September 5, 2006	2 sessions
September 6, 2006	1 session
<u>Total Forum Fees</u>	<u>= \$21,600.00</u>

1. The Panel has assessed \$10,800.00 of the forum fees jointly and severally to Claimants Jay Berkowitz, Pagona Berkowitz, Larry Berkowitz, Beth Berkowitz, Joseph A. Berkowitz, and Barbara Berkowitz.
2. The Panel has assessed \$10,800 of the forum fees jointly and severally to Respondents.

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.

1. Respondent Morgan Stanley requested service copies of tapes = \$ 210.00

FEE SUMMARY

1. Claimants are jointly and severally assessed and shall pay the following fees:

<u>Initial Filing Fee</u>	= \$ 500.00
<u>Total Fees</u>	= \$ 500.00
<u>Less payments</u>	= \$ 500.00
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Claimants Jay Berkowitz, Pagona Berkowitz, Larry Berkowitz, Beth Berkowitz, Joseph A. Berkowitz, and Barbara Berkowitz are jointly and severally assessed and shall pay the following fees:

<u>Forum Fees</u>	= \$10,800.00
<u>Total Fees</u>	= \$10,800.00
<u>Less payments</u>	= \$ 1,200.00
Balance Due NASD Dispute Resolution	= \$ 9,600.00

3. Respondent Morgan Stanley is assessed and shall pay the following fees:

<u>Member Fees</u>	= \$ 8,550.00
<u>Administrative Costs</u>	= \$ 210.00
<u>Total Fees</u>	= \$ 8,760.00
<u>Less payments</u>	= \$ 8,760.00
Balance Due NASD Dispute Resolution	= \$ 8,760.00

4. Respondents are jointly and severally assessed and shall pay the following fees:

<u>Forum Fees</u>	= \$10,800.00
<u>Total Fees</u>	= \$10,800.00
<u>Less payments</u>	= \$ 2,790.00
Balance Due NASD Dispute Resolution	= \$ 8,010.00

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

ARBITRATION PANEL

Edward Greer, Esq.	-	Public Arbitrator, Presiding Chairperson
Rafael A. Porrata-Doria, Jr., Esq.	-	Public Arbitrator, Panelist
John R. Pepe, Sr.	-	Non-Public Arbitrator, Panelist

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Concurring Arbitrators' Signatures



Edward Greer, Esq.
Public Arbitrator, Presiding Chairperson



Signature Date

Rafael A. Porrata-Doria, Jr., Esq.
Public Arbitrator, Panelist

Signature Date

John R. Pepe, Sr.
Non-Public Arbitrator, Panelist

Signature Date




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

Concurring Arbitrators' Signatures

Edward Greer, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Rafael A. Porraja-Doria, Jr., Esq.
Public Arbitrator, Panelist

14 Sept 2006

Signature Date

John R. Pepe, Sr.
Non-Public Arbitrator, Panelist

Signature Date

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

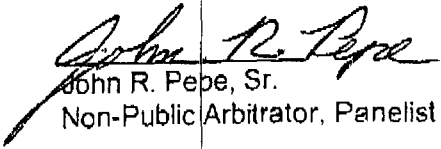
Concurring Arbitrators' Signatures


Edward Greer, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Rafael A. Porrata-Doria, Jr., Esq.
Public Arbitrator, Panelist

Signature Date


John R. Pepe, Sr.
Non-Public Arbitrator, Panelist


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