

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Barbara E. Richards, Claimant v. Morgan Stanley DW Inc., C. Michael Jennings and John H. Polhemus, Respondents

Case Number: 05-03458

Hearing Site: San Francisco, California
and Redding, California

Nature of the Dispute: Customer v. Member and Associated Persons

REPRESENTATION OF PARTIES

For Claimant:

W. Stephen Wilson, Esq.
Tobin & Tobin
San Francisco, California

For Respondents

Morgan Stanley DW Inc ("MSDW") and
John H. Polhemus ("Polhemus"):

Paul D. Allen, Esq.
Bingham McCutchen LLP
San Francisco, California

For Respondent C. Michael Jennings
("Jennings"):

Gordon C. Young, Esq.
Keesal, Young & Logan
San Francisco, California

CASE INFORMATION

Statement of Claim filed: July 6, 2005

Claimant's Uniform Submission Agreement signed: June 28, 2005

Joint Statement of Answer filed by Respondents MSDW and Polhemus: August 29, 2005

Statement of Answer filed by Jennings: August 30, 2005

Respondent MSDW's Uniform Submission Agreement signed: August 26, 2005

Respondent Polhemus' Uniform Submission Agreement signed: August 29, 2005

Respondent Jennings' Uniform Submission Agreement signed: August 26, 2005

CASE SUMMARY

Claimant alleged fraudulent mismanagement of accounts, excessive and unauthorized trading of securities account, fraudulent inducement to open discretionary account, broker's breach of fiduciary duty, financial abuse of an elder, common count, unjust enrichment, negligence, and violation of Racketeer Influenced and Corrupt Practices Act, 18 USC § 1962(a) and 18 USC § 1962(c). Claimant's allegations involved, in part, variable annuities, Class B shares of equity mutual funds, and technology funds.

Respondents MSDW and Polhemus denied the allegations of wrongdoing set forth in Claimant's Statement of Claim and asserted various affirmative defenses.

Respondent Jennings denied the allegations of wrongdoing set forth in Claimant's Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested in excess of \$3,000,000.00 in compensatory damages, treble damages, punitive damages, interest, and costs, including attorney's fees.

Respondents MSDW and Polhemus requested dismissal of Claimant's Statement of Claim in its entirety, expungement of this matter from Respondent Polhemus' CRD records, and costs, including attorney's fees.

Respondent Jennings requested dismissal of Claimant's Statement of Claim in its entirety, expungement of this matter from his CRD records, and costs.

OTHER ISSUES CONSIDERED AND DECIDED

On April 24, 2006, the Panel held a telephonic pre-hearing conference with the parties to discuss, among other things, Claimant's request that part of the hearings be held in Redding, California, due to Claimant's elderly status and failing health. All parties and arbitrators in this matter agreed to Claimant's request and also agreed that the parties will bear the costs of the arbitrators travel expenses to, from, and during the hearings in Redding, California, which is not an established NASD hearing location.

On April 17, 2006, Respondents MSDW and Polhemus filed a Motion to Dismiss. On April 19, 2006, Respondent Jennings joined in the above-referenced motion. On April 28, 2006, Claimant filed an opposition to the Motion to Dismiss. On May 2, 2006, Respondents MSDW and Polhemus filed a Reply in support of their Motion to Dismiss. On May 3, 2006, the Panel held a telephonic hearing with the parties to hear oral argument. After due deliberation, the Panel denied Respondents' Motion to Dismiss.

At the hearing, Respondents re-raised their Motion to Dismiss. Claimant opposed. After due deliberation, 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) Respondents MSDW and Jennings are jointly and severally liable to and shall pay Claimant the sum of \$217,250.00 in compensatory damages.
- 2) Claimant's claims against Polhemus are denied in their entirety.
- 3) Respondents Jennings' and Polhemus' requests for expungement of references to this matter from their registration records maintained by the NASD Central Registration Depository ("CRD") are denied.
- 4) The parties shall bear their respective costs, including attorney's fees.
- 5) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure, 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	= \$ 600.00
--------------------------	-------------

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 MSDW is a party and the following fees are assessed:

Member Surcharge	= \$ 3,350.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 5,500.00
Total Member Fees	= \$ 9,600.00

Forum Fees and Assessments

The Panel assessed forum fees for each session conducted or each decision rendered on a discovery-related motion decided on the papers. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

(3) Pre-hearing conference sessions with the Panel @ \$1,200.00/session = \$ 3,600.00

Pre-hearing conferences:	November 1, 2005	1 session
	April 24, 2006	1 session
	May 3, 2006	1 session

(9) Hearing sessions @ \$1,200.00/session (in San Francisco) = \$10,800.00

Hearings:	May 15, 2006	1 session
	May 16, 2006	2 sessions
	May 17, 2006	2 sessions
	May 18, 2006	2 sessions
	May 19, 2006	2 sessions

(8) Hearing sessions @ \$1,200.00/session (in Redding) = \$ 9,600.00

Hearings:	September 25, 2006	1 session
-----------	--------------------	-----------

September 26, 2006	2 sessions
September 27, 2006	2 sessions
September 28, 2006	2 sessions
September 29, 2006	1 session

Total Forum Fees	= \$24,000.00
-------------------------	----------------------

1. The Panel assessed \$24,000.00 of the forum fees jointly and severally to Respondent MSDW and Jennings.

Administrative Costs

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and sundry other requests.

Audiotapes of hearing requested by Claimant (18 tapes @ \$15/tape) = \$ 270.00

Arbitrators' Travel Expenses to Redding, California: = \$2,062.76

1. The Panel assessed \$1,031.38 of the Arbitrators' Travel Expenses to Claimant.
2. The Panel assessed \$1,031.38 of the Arbitrators' Travel Expenses jointly and severally to Respondents MSDW, Jennings, and Polhemus.

Fee Summary

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

Initial Filing Fee	= \$ 600.00
Administrative Costs	= \$ 1,301.38
<hr/> Total Fees	<hr/> = \$ 1,901.38
Less payments	= \$(2,070.00)
Refund Due	= \$ (168.62)

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

Member Fees	= \$ 9,600.00
Less payments	= \$(5,750.00)
<hr/> Balance Due NASD Dispute Resolution	<hr/> = \$ 3,850.00

3. Respondents MSDW and Jennings are charged jointly and severally with the following fees and costs:

Forum Fees	= \$24,000.00
Less payments	= \$ (0.00)
<hr/> Balance Due NASD Dispute Resolution	<hr/> = \$24,000.00

4. Respondents MSDW, Jennings, and Polhemus are charged jointly and severally with the following fees and costs:


Administrative Costs	= \$ 1,031.38
Less payments	= \$ (0.00)
<hr/> Balance Due NASD Dispute Resolution	<hr/> = \$ 1,031.38

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.

ARBITRATION PANEL

Harold A. Kennedy	-	Public Arbitrator, Presiding Chair
Patricia Shuler Schimbor	-	Public Arbitrator
Bradley C. Mitchell	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Harold A. Kennedy
Chair, Public Arbitrator

10/24/06

Signature Date

Patricia Shuler Schimbor
Public Arbitrator

Signature Date

Bradley C. Mitchell
Non-Public Arbitrator

Signature Date

October 25, 2006

Date of Service
(NASD Use Only)

ARBITRATION PANEL

Harold A. Kennedy	-	Public Arbitrator, Presiding Chair
Patricia Shuler Schimbor	-	Public Arbitrator
Bradley C. Mitchell	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Harold A. Kennedy
Chair, Public Arbitrator

Signature Date

Patricia Shuler Schimbor

Patricia Shuler Schimbor
Public Arbitrator

10-24-06

Signature Date

Bradley C. Mitchell
Non-Public Arbitrator

Signature Date

October 25, 2006

Date of Service
(NASD Use Only)

ARBITRATION PANEL

Harold A. Kennedy	-	Public Arbitrator, Presiding Chair
Patricia Shuler Schimbor	-	Public Arbitrator
Bradley C. Mitchell	-	Non-Public Arbitrator

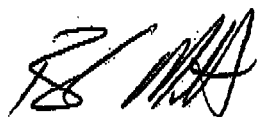
Concurring Arbitrators' Signatures

Harold A. Kennedy
Chair, Public Arbitrator

Signature Date

Patricia Shuler Schimbor
Public Arbitrator

Signature Date



Bradley C. Mitchell
Non-Public Arbitrator

10/25/06

Signature Date

October 25, 2006

Date of Service
(NASD Use Only)