

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Robert J. Souza, Claimant v. Morgan Stanley DW Inc. and Steven G. Elefante,
Respondents

Case Number: 05-03647

Hearing Site: Los Angeles, California

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

REPRESENTATION OF PARTIES

For Claimant:

Randy S. Cohn, Esq.
SimmonsCooper, LLC
East Alton, Illinois

For Respondents:

James J. Fontanilla, Esq.
Morgan Stanley Law Division
San Francisco, California

CASE INFORMATION

Statement of Claim filed: July 14, 2005

Claimant's Uniform Submission Agreement signed: June 23, 2005

Joint Statement of Answer filed by Respondents: September 19, 2005

Respondent Morgan Stanley DW Inc.'s Uniform Submission Agreement signed:
September 19, 2005

Respondent Steven G. Elefante's Uniform Submission Agreement signed:
September 18, 2005

CASE SUMMARY

Claimant alleged breach of contract, breach of fiduciary duty, unsuitability, violation of federal and state laws, and failure to supervise. Claimant's allegations involved Respondents' alleged failure to diversify Claimant's account, resulting in the over-concentration of Claimant's portfolio in high risk technology stocks and aggressive-

growth mutual funds, the latter of which were heavily composed of equities. Claimant also alleged that Respondents' recommendation that he purchase Class B versus Class A shares was unsuitable.

More specifically, Claimant complained that his account was concentrated in the following stocks and mutual funds: Ariba, Inc.; Broadbase Software, Inc.; Cisco Systems, Inc.; Electric Data Systems Corp.; EMC Corp.; Exodus Communications, Inc.; Foundry Networks, Inc.; Macromedia Incorporated; Net2Phone; Oracle Corp.; National Software Corp.; Siebel Systems, Inc.; Silicon Lab, Inc.; Socket Communications, Inc.; Sprint PCS; Sun Microsystems, Inc.; Sycamore Networks, Inc.; Teradyne, Inc.; Viasystems; Web Methods; Western Digital Corporation; Putnam Fund for Growth and Income; Putnam OTC Emerging Growth Fund; Oppenheimer Quest Opportunity Value Fund; and, Pimco Total Return Fund.

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

RELIEF REQUESTED

Claimant requested \$139,000.00 in compensatory damages, unspecified exemplary damages, pre-judgment interest, and costs, including attorney's fees.

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

OTHER ISSUES CONSIDERED AND DECIDED

On July 7, 2006, Respondents filed a Motion in Limine. Claimant filed a response to the motion on July 11, 2006. During the hearing, Respondents withdrew the motion.

During the hearing, Respondent Steven G. Elefante requested that the Panel recommend expungement of all reference to the above-captioned arbitration from the registration records maintained by the NASD Central Registration Depository ("CRD"). After due deliberation, the Panel denied Mr. Elefante's request.

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 Morgan Stanley DW Inc. is liable to and shall pay Claimant Robert J. Souza the sum of \$22,444.00 in compensatory damages.
- 2) Respondent Morgan Stanley DW Inc. is liable to and shall pay Claimant Robert J. Souza simple interest in the amount of 10% per annum from July 14, 2005 until the date payment of this Award is made in full.
- 3) The parties shall bear their respective costs, including attorney's fees.
- 4) All other relief requested and not expressly granted, including Claimant's request for exemplary damages and Mr. Elefante's request for the expungement, 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	= \$ 300.00
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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	= \$1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$2,750.00</u>
Total Member Fees	= \$5,200.00

Forum Fees and Assessments

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

One (1) Decision on discovery-related motions on the papers with a single arbitrator @ \$200.00/decision	= \$ 200.00
Respondent submitted one (1) discovery-related motion	
One (1) Pre-hearing conference session with the Panel @ \$1,125.00/session	= \$1,125.00
Pre-hearing conference: December 15, 2005 1 session	
Five (5) Hearing sessions @ \$1,125.00/session	= \$5,625.00
Hearings: July 18, 2006 2 sessions	
July 19, 2006 2 sessions	
July 20, 2006 1 session	
Total Forum Fees	= \$6,950.00

1. The Panel assessed \$3,475.00 of the forum fees to Claimant Robert J. Souza.
2. The Panel assessed \$3,475.00 of the forum fees to Respondent Morgan Stanley DW Inc.

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.

Claimant requested 55 photocopies @ \$0.50: =\$ 27.50

Fee Summary

1. Claimant Robert J. Souza is charged (with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 3,475.00
<u>Administrative Costs</u>	<u>= \$ 27.50</u>
Total Fees	= \$ 3,802.50
<u>Less payments</u>	<u>= \$(1,575.00)</u>
Balance Due NASD Dispute Resolution	= \$ 2,227.50

2. Respondent Morgan Stanley DW Inc. is charged with the following fees and costs:

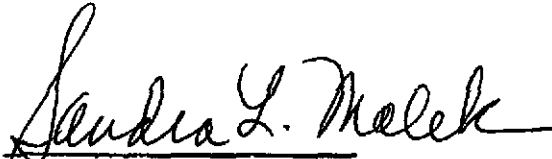
Member Fees	= \$ 5,200.00
Forum Fees	= \$ 3,475.00
Total Fees	= \$ 8,675.00
<u>Less payments</u>	<u>= \$(6,250.00)</u>
Balance Due NASD Dispute Resolution	= \$ 2,425.00

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.

ARBITRATION PANEL

Sandra L. Malek, Esq.	-	Public Arbitrator, Presiding Chair
Louis P. Davis	-	Public Arbitrator
James P. Murphy	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Sandra L. Malek, Esq.
Chair, Public Arbitrator

7/24/06
Signature Date

Louis P. Davis
Public Arbitrator

Signature Date

James P. Murphy
Non-Public Arbitrator

Signature Date

7/24/06
Date of Service


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Signature Date


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7-29-06
Signature Date

7/24/06
Date of Service