

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Harvey Novack and Manuel Palan,
Claimants,

Case Number: 05-04144
Hearing Site: St. Louis, Missouri

v.

Morgan Stanley DW, Inc.,
Respondents.

Nature of the Dispute: Associated Persons v. Member

REPRESENTATION OF PARTIES

Harvey Novack ("Novack") and Manuel Palan ("Palan"), hereinafter collectively referred to as "Claimants": Anthony S. Bruning, Esq. of Leritz, Plunkert & Bruning, P.C., located in St. Louis, Missouri.

Morgan Stanley DW, Inc. ("Morgan Stanley"), hereinafter referred to as "Respondent": Salvador M. Hernandez, Esq. of Bowen, Riley Warnock & Jacobson, PLC, located in Nashville, Tennessee.

CASE INFORMATION

Statement of Claim filed on or about: August 9, 2005

Claimants, Novak and Palan, jointly signed the Uniform Submission Agreement: August 1, 2005

Statement of Answer filed by Respondent Morgan Stanley on or about: October 10, 2005

Morgan Stanley did not sign a Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: breach of employment contract, failure to pay compensation and commissions, negligence and breach of fiduciary duty. Claimants asserted that Morgan Stanley breached promises it made to Claimants, made intentional and/or negligent misrepresentations and omissions to induce Claimants to move their business to Morgan Stanley from Stifel Nicolaus & Co., Inc. ("Stifel"). In consequence of that move, Claimants lost substantial amounts in compensation, stock options, stock, deferred compensation and pension benefits they had accrued at Stifel. Claimants further asserted that because Morgan Stanley breached its promises and falsely or negligently represented to Claimants that they could transfer and conduct all of their business as they had done at Stifel, Claimants lost substantial revenue and incurred expenses that Morgan Stanley promised it would cover.

Unless specifically admitted in its Answer, Respondent Morgan Stanley denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

1. Statute of limitations;
2. Equitable estoppel and acquiescence
3. Waiver;
4. Laches; and
5. Accord and Satisfaction and Ratification.

RELIEF REQUESTED

Claimants, Novack and Palan, requested \$3,900,000.00 in compensatory damages. Morgan Stanley requested that the claims brought against them by Claimants be dismissed.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent, Morgan Stanley, did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

AWARD

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

1. Respondent, Morgan Stanley DW, Inc., is solely liable for and shall pay Claimants, Harvey Novack and Manuel Palan, the sum of \$296,000.00 as compensatory damages to be divided between them as they decide.
2. Except as otherwise specified herein, parties shall bear their own costs, including attorneys' fees.
3. Any and all relief not specifically addressed herein, including punitive damages, are denied.

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	= \$ 600.00
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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 that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Morgan Stanley DW, Inc. is a party and is assessed the following fees:

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00

Hearing process fee = \$ 5,000.00

Forum Fees and Assessments

The Panel has 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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$450.00 = \$ 450.00
Pre-hearing conference: May 5, 2006 1 session

Two (2) Pre-hearing sessions with Panel @ \$1,200.00 = \$ 2,400.00
Pre-hearing conferences: December 12, 2005 1 session
May 3, 2006 1 session

Six (6) Hearing sessions @ \$1,200.00 = \$ 7,200.00
Hearing Dates: May 16, 2006 2 sessions
May 17, 2006 2 sessions
May 18, 2006 2 sessions

Total Forum Fees = \$10,050.00

1. The Panel has assessed 50% of the total forum fees in the amount of \$5,025.00 jointly and severally to Claimants, Harvey Novack and Manuel Palan.
2. The Panel has assessed 50% of the total forum fees in the amount of \$5,025.00 solely to Respondent Morgan Stanley DW, Inc.

Fee Summary

1. Claimants, Harvey Novack and Manuel Palan, is solely liable for:

Initial Filing Fee	= \$ 600.00
<u>Forum Fees</u>	= \$ 5,025.00
Total Fees	= \$ 5,625.00
<u>Less payments</u>	= \$ 1,800.00
Balance Due NASD Dispute Resolution	= \$ 3,825.00

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

Member Fees	= \$ 8,550.00
<u>Forum Fees</u>	= \$ 5,025.00
Total Fees	= \$13,575.00
<u>Less payments</u>	= \$13,550.00
Balance Due NASD Dispute Resolution	= \$ 25.00

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

ARBITRATION PANEL

Gerald Cohen, Esq.	-	Public Arbitrator, Presiding Chairperson
Richard K. Zerr, Esq.	-	Public Arbitrator
Stanley F. Van Sant	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/ Gerald Cohen, Esq.
Gerald Cohen, Esq.
Public Arbitrator, Presiding Chairperson

6/13/06
Signature Date

/s/ Richard K. Zerr, Esq.
Richard K. Zerr, Esq.
Public Arbitrator

6/13/06
Signature Date

/s/ Stanley F. Van Sant
Stanley F. Van Sant
Non-Public Arbitrator

6/13/06
Signature Date

6/13/06
Date of Service (For NASD Dispute Resolution use only)

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