

**Award**  
**NASD Dispute Resolution**

---

In the Matter of the Arbitration Between:

Morgan Stanley DW Inc., Claimant v. Bradley J. Kroneberger, Respondent

Bradley J. Kroneberger, Counter-Claimant v. Morgan Stanley DW Inc., Counter-Respondent

Case Number: 05-04206

Hearing Site: Denver, Colorado

---

Nature of the Dispute: Member v. Associated Person

Nature of the Dispute: Associated Person v. Member

**REPRESENTATION OF PARTIES**

For Claimant/Counter-Respondent Morgan Stanley DW Inc.: Ronald P. Kane, Esq.  
Diane C. Fischer, Esq.  
Christopher J. Moyer,  
Esq.  
Kane & Fischer, Ltd.  
Chicago, Illinois

For Respondent/Counter-Claimant Bradley J. Kroneberger: Bradley J. Kroneberger  
Pro Se  
Fort Collins, Colorado

**CASE INFORMATION**

Statement of Claim filed: August 10, 2005

Claimant/Counter-Respondent Morgan Stanley DW Inc.'s ("Morgan Stanley") Uniform Submission Agreement signed: August 9, 2005

Statement of Answer and Counterclaim filed by Respondent/Counter-Claimant Bradley J. Kroneberger ("Kroneberger"): November 3, 2005

Response to Counterclaim filed by Morgan Stanley: December 12, 2005

Amended Statement of Claim filed: July 21, 2006

## **CASE SUMMARY**

### **Claim**

Morgan Stanley filed a claim to collect monies allegedly owed to it by Kroneberger pursuant to the terms of a promissory note that had been executed by Kroneberger in connection with his employment with Morgan Stanley.

Kroneberger admitted that he agreed that he agreed to repay the loan referenced in the Statement of Claim and acknowledged that if his employment were terminated with Morgan Stanley for any reason, then the unpaid balance on the loan would be due and payable. Otherwise, unless specifically admitted in his Answer, Kroneberger denied the allegations of wrongdoing set forth in Claimant's Statement of Claim and asserted various affirmative defenses.

### **Counterclaim**

Kroneberger asserted the following causes of action: breach of contract, unjust enrichment, misrepresentation, and promissory estoppel. Kroneberger alleged that Morgan Stanley breached promises that it allegedly made to Kroneberger in connection with his employment at Morgan Stanley.

Unless specifically admitted in its Response to Counterclaim, Morgan Stanley denied the allegations of wrongdoing set forth in Kroneberger's Counterclaim and asserted various affirmative defenses.

### **Amended Statement of Claim**

Morgan Stanley filed an amended claim to collect monies allegedly owed to it by Kroneberger pursuant to the terms of two promissory notes that had been executed by Kroneberger in connection with his employment at Morgan Stanley.

## **RELIEF REQUESTED**

### **Claim**

Morgan Stanley requested \$100,000.00 in compensatory damages, which represents the principal balance due on the promissory note; interest that accrued during the term of the promissory note at the rate of 7% per annum (\$1,227.52); interest on the balance due on the promissory note from the date of default (January 3, 2003) to the date of payment at the rate of 8% per annum; and costs, including attorney's fees.

Kroneberger requested dismissal of Morgan Stanley's Statement of Claim in its entirety and costs, including attorney's fees.

**Counterclaim**

Kroneberger requested unspecified compensatory damages, pre- and post-judgment interest, and costs, including attorney's fees.

Morgan Stanley requested dismissal of Kroneberger's Counterclaim in its entirety and costs, including attorney's fees.

**Amended Statement of Claim**

Morgan Stanley requested \$180,000.00 as the principal balance due on a July 2000 Note and Amendment 1 to that note, interest accrued during the term of the note in the amount of \$3,057.84 at the rate of 5% per annum, interest at the rate of 8% per annum from January 3, 2003 (the date of default) to the date of payment, \$120,000.00 as the principal balance due on an October 2000 Note and Amendment 2 to that note, interest accrued during the term of the note in the amount of \$1,052.16 at the rate of 5% per annum,<sup>1</sup> interest at the rate of 8% per annum from January 3, 2003 (the date of default) to the date of payment, and costs, including attorney's fees.

**OTHER ISSUES CONSIDERED AND DECIDED**

Kroneberger did not file with NASD Dispute Resolution a properly executed submission agreement, but he is required to submit to arbitration pursuant to NASD's Code of Arbitration Procedure ("Code"), and, having answered the claim and appeared and testified at the hearing, he is bound by the determination of the Panel on all issues submitted. Furthermore, Kroneberger orally agreed at the hearing to be bound by the terms and conditions of Rule 10301.

Kroneberger was initially represented by Charles H. Torres, Esq. of Denver, Colorado. Mr. Torres submitted a notice of withdrawal of his representation of Kroneberger on July 21, 2006. Kroneberger indicated at the hearing that he had been unable to obtain replacement counsel due to a lack of funds and counsel availability.

On June 14, 2006, Morgan Stanley filed a Motion to Amend its Statement of Claim and a [proposed] Amended Statement of Claim pursuant to Rule 10328(c). On June 28, 2006, Morgan Stanley filed a Revised Motion to Amend its Statement of Claim and a [revised proposed] Amended Statement of Claim. On July 11, 2006, Kroneberger filed a response to Morgan Stanley's Motions to Amend its Statement of Claim. On July 11,

---

<sup>1</sup> The interest rate stated on the promissory notes for interest accruing during the terms of the notes is 7% per annum.

2006, Morgan Stanley filed a Reply in Support of its Motion to Amend its Statement of Claim. On July 21, 2006, the Panel and the parties participated in a pre-hearing conference during which the Panel heard oral argument regarding Morgan Stanley's motion. In an Order dated July 21, 2006, the Panel granted Morgan Stanley's Revised Motion to Amend its Statement of Claim.

During the afternoon session of the hearing, the Chairperson was notified by NASD Dispute Resolution staff that the arbitration Panel should have been composed of two (2) public arbitrators and one (1) industry arbitrator. The Chairperson notified the parties of this, and both Morgan Stanley and Kroneberger agreed to proceed with the existing panel of three (3) industry arbitrators.

This Award will be executed by the arbitrators in counterpart copies.

### **AWARD**

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

- 1) Bradley J. Kroneberger has breached the terms of the promissory notes and thus is liable to and shall pay Morgan Stanley DW Inc. the sum of \$300,000.00 in compensatory damages.
- 2) Bradley J. Kroneberger is liable to and shall pay Morgan Stanley DW Inc. the sum of \$2,500.91 as reimbursement for legal research fees, photocopying and facsimile charges, and telephone calls.
- 3) Bradley J. Kroneberger is liable to and shall pay Morgan Stanley DW Inc. the sum of \$1,000.00 as reimbursement for Morgan Stanley DW Inc.'s filing fee.
- 4) Bradley J. Kroneberger is liable to and shall pay Morgan Stanley DW Inc. the sum of \$50,000.00 in attorney's fees, pursuant to the terms of the promissory notes.
- 5) Bradley J. Kroneberger is liable to and shall pay Morgan Stanley DW Inc. interest that accrued during the terms of both notes through the date of Bradley J. Kroneberger's termination in the amount of \$4,110.00.
- 6) Bradley J. Kroneberger is liable to and shall pay Morgan Stanley DW Inc. interest that accrued on the balance due and owing on both notes from January 3, 2003 through August 15, 2006 at a rate of 8% per annum in the amount of \$86,850.91.
- 7) With the exceptions of paragraphs 2, 3, and 4, the parties shall bear their respective

costs, including attorney's fees.

8) Bradley J. Kroneberger's counterclaims are denied in their entirety.

9) Any and all relief not specifically addressed herein 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	= \$1,000.00
Kroneberger's Counterclaim	= \$ 250.00

#### **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 Morgan Stanley DW Inc. is a party, and the following fees are assessed:

Member Surcharge	= \$1,700.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$2,750.00
<b>Total Member Fees</b>	<b>= \$5,200.00</b>

#### **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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), which lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) decisions on discovery-related motions on the papers	
with (1) one arbitrator @ \$200.00	= \$ 600.00
Morgan Stanley submitted (1) one discovery-related motion	
Kroneberger submitted (2) two discovery-related motions	

Three (3) pre-hearing conference sessions with the Panel	
@ \$1,125.00/session	= \$3,375.00

Pre-hearing conferences:	December 20, 2005	1 session
	July 21, 2006	1 session
	August 7, 2006	1 session

Two (2) Hearing sessions @ \$1,125.00/session	= \$2,250.00
Hearings: August 15, 2006 2 sessions	
<b>Total Forum Fees</b>	<b>= \$6,225.00</b>

1. The Panel assessed \$3,012.50 of the forum fees to Morgan Stanley.
2. The Panel assessed \$3,212.50 of the forum fees to Kroneberger.

**Fee Summary**

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

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 5,200.00
Forum Fees	= \$ 3,012.50
Total Fees	= \$ 9,212.50
Less payments	= \$(6,350.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 2,862.50</b>

2. Bradley J. Kroneberger is charged with the following fees and costs:

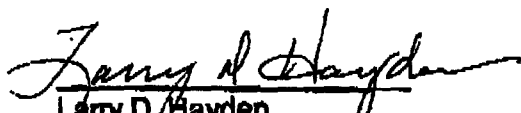
Counterclaim Filing Fee	= \$ 250.00
Forum Fees	= \$3,212.50
Total Fees	= \$3,462.50
Less payments	= \$ (0.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$3,462.50</b>

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**

<b>Larry D. Hayden</b>	•	<b>Non-Public Arbitrator, Presiding Chair</b>
<b>George H. Reeves, III</b>	•	<b>Non-Public Arbitrator</b>
<b>Jess B. Cohen</b>	•	<b>Non-Public Arbitrator</b>

**Concurring Arbitrators' Signatures**

  
Larry D. Hayden  
Chair, Non-Public Arbitrator

9-1-06  
Signature Date

\_\_\_\_\_  
George H. Reeves, III  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Jess B. Cohen  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

9/1/06  
Date of Service

**ARBITRATION PANEL**

<b>Larry D. Hayden</b>	-	<b>Non-Public Arbitrator, Presiding Chair</b>
<b>George H. Reeves, III</b>	-	<b>Non-Public Arbitrator</b>
<b>Jess B. Cohen</b>	-	<b>Non-Public Arbitrator</b>

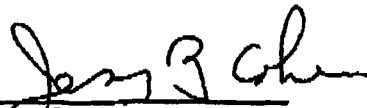
**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Larry D. Hayden  
Chair, Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
George H. Reeves, III  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

  
\_\_\_\_\_  
Jess B. Cohen  
Non-Public Arbitrator

9-1-06  
\_\_\_\_\_  
Signature Date

9/1/06  
\_\_\_\_\_  
Date of Service



**ARBITRATION PANEL**

<b>Larry D. Hayden</b>	•	<b>Non-Public Arbitrator, Presiding Chair</b>
<b>George H. Reeves, III</b>	-	<b>Non-Public Arbitrator</b>
<b>Jess B. Cohen</b>	-	<b>Non-Public Arbitrator</b>

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Larry D. Hayden  
Chair, Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

  
\_\_\_\_\_  
George H. Reeves, III  
Non-Public Arbitrator

9/5/06  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Jess B. Cohen  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

9/6/06  
\_\_\_\_\_  
Date of Service