

COPY

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Robert W. Allen, Claimant v. Morgan Stanley DW Inc. (f/k/a Morgan Stanley Dean Witter),
Respondent

Case Number: 05-04352

Hearing Site: Boise, Idaho

Nature of the Dispute: Customer v. Member

REPRESENTATION OF PARTIES

For Claimant:

Debra Brewer Hayes, Esq.
Woska & Hayes, LLP
Kingwood, Texas

For Respondent:

Debra R. Volland, Esq.
Morgan Stanley DW Inc.
San Francisco, California

CASE INFORMATION

Statement of Claim filed: August 15, 2005

Claimant Robert W. Allen's Uniform Submission Agreement signed: July 18, 2005

Statement of Answer filed by Respondent Morgan Stanley DW Inc.: November 4, 2005

Respondent Morgan Stanley DW Inc.'s (f/k/a Morgan Stanley Dean Witter and hereinafter
"Morgan Stanley DW Inc.") Uniform Submission Agreement signed: November 4, 2005

CASE SUMMARY

Claimant asserted the following causes of action: violation of section 10(b) of the Securities Exchange Act and rule 10(b)(5) promulgated thereunder, control person liability pursuant to Section 20(a) of the Securities Exchange Act, breach of fiduciary duty, breach of contract, violation of the "know your customer" rule, unsuitability, failure to diversify, over-concentration, failure to supervise, violation of NASD and NYSE rules, violation of the Idaho Securities Act, violation of the Idaho Consumer Protection Act, intentional and negligent misrepresentation, unjust enrichment, breach of duty of good faith and fair dealing, gross negligence, unauthorized trading, and failure to hedge. Claimant's allegations concerned Respondent's alleged failure to act in accordance with Claimant's stated financial objectives by purchasing stocks such as JDS Uniphase, Ariba, and Brocade for Claimant's accounts.

Unless specifically admitted in its Answer, Respondent denied the allegations of wrongdoing set forth in Claimant's Statement of Claim and asserted the following defenses: waiver, estoppel, ratification, failure to mitigate, lack of due diligence, assumption of risk, market price fluctuations, comparable fault, laches, failure to state a claim, statute of limitations, good faith, adequate supervisory procedures, and compliance with applicable statutes or regulations.

RELIEF REQUESTED

Claimant requested \$130,000.00 in compensatory damages, return of charges to Claimant's accounts, lost earnings, unspecified punitive damages, pre- and post-judgment interest, and costs, including attorney's fees and an assessment of all forum fees to Respondent.

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

OTHER ISSUES CONSIDERED AND DECIDED

On November 4, 2005, Respondent Morgan Stanley DW Inc. filed a Motion to Dismiss this matter on the grounds that all of Claimant's claims are barred as a matter of law by applicable statutes of limitations. On November 14, 2005, Claimant Robert W. Allen filed a Response to Respondent's Motion to Dismiss. On December 15, 2005, Respondent filed a Reply to Claimant's Response to Respondent's Motion to Dismiss. On January 30, 2006, the Panel heard oral argument from counsel for both parties regarding Respondent's Motion to Dismiss. The Panel then conferred in executive session and reviewed counsels' arguments and Claimant's monthly account statements, which were attached to Respondent's motion as Exhibit B.

The Panel was unpersuaded by counsel for Claimant's argument that the Panel lacked authority to dismiss claims that have been brought beyond the applicable statute of limitations. The Panel unanimously concluded that each and every one of Claimant's claims is time barred by the statute or statutes of limitations applicable to it.

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, Respondent's Motion to Dismiss, Claimant's Response to Respondent's Motion to Dismiss, Respondent's Reply to Claimant's Response to Respondent's Motion to Dismiss, and the parties' oral arguments, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) This matter is dismissed with prejudice.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) Any and all relief not specifically addressed herein, including punitive damages, 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 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. The following forum fees are assessed:

Two (2) pre-hearing conference sessions with the Panel @ \$1,125.00/session	= \$2,250.00
Pre-hearing conferences: December 16, 2005 1 session	
January 30, 2006 1 session	
Total Forum Fees	= \$2,250.00

1. The Panel assessed \$1,125.00 of the forum fees to Claimant Robert W. Allen.
2. The Panel assessed \$1,125.00 of the forum fees to Respondent Morgan Stanley DW Inc.

Fee Summary

1. Claimant Robert W. Allen is charged solely with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 1,125.00
Total Fees	= \$ 1,425.00
Less payments	= \$(1,425.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

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

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 1,125.00
Total Fees	= \$ 6,325.00
Less payments	= \$(2,450.00)
Balance Due NASD Dispute Resolution	= \$ 3,875.00

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.

NASD Dispute Resolution
Arbitration No. 05-04352
Award Page 5 of 5

ARBITRATION PANEL

Katherine H. O'Neil, Esq.
Sandra Smith Gangle, Esq.
Joseph L. Mangan

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-
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Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

Katherine H. O'Neil

Katherine H. O'Neil, Esq.
Chair, Public Arbitrator

1/30/06

Signature Date

Sandra Smith Gangle, Esq.
Public Arbitrator

Signature Date

Joseph L. Mangan
Non-Public Arbitrator

Signature Date

1/31/06

Date of Service

NASD Dispute Resolution
Arbitration No. 05-04352
Award Page 5 of 5

ARBITRATION PANEL

Katherine H. O'Neill, Esq.
Sandra Smith Gangle, Esq.
Joseph L. Mangan

- *Public Arbitrator, Presiding Chair*
- *Public Arbitrator*
- *Non-Public Arbitrator*

Concurring Arbitrators' Signatures

Katherine H. O'Neill, Esq.
Chair, Public Arbitrator

Signature Date


Sandra Smith Gangle, Esq.
Public Arbitrator

January 30, 2001
Signature Date

Joseph L. Mangan
Non-Public Arbitrator

Signature Date

1/31/01
Date of Service

ARBITRATION PANEL

<i>Katherine H. O'Neil, Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Sandra Smith Gangle, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Joseph L. Mangan</i>	-	<i>Non-Public Arbitrator</i>

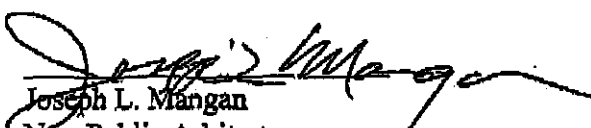
Concurring Arbitrators' Signatures

Katherine H. O'Neil, Esq.
Chair, Public Arbitrator

Signature Date

Sandra Smith Gangle, Esq.
Public Arbitrator

Signature Date



Joseph L. Mangan
Non-Public Arbitrator

1-31-06

Signature Date

Date of Service