

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of Claimant

Morgan Stanley DW, Inc.

vs.

Case Number: 05-05849

Hearing Site: Minneapolis, Minnesota

Name of Respondent

Gary A. Rusche

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**NATURE OF THE DISPUTE**

Member vs. Associated Person

**REPRESENTATION OF PARTIES**

Morgan Stanley DW, Inc. ("Claimant") was represented by Diane C. Fisher, Esq., and Ron Kane, Esq., Kane & Fischer, LTD, Chicago, Illinois.

Gary A. Rusche ("Respondent") did not appear.

**CASE INFORMATION**

The Statement of Claim was filed on or about November 16, 2005. The Submission Agreement of Claimant, Morgan Stanley DW, Inc., was signed on or about November 1, 2005 by Michael A. Colvin, Esq., Vice President, Morgan Stanley, DW, Inc.

**CASE SUMMARY**

Claimant asserted causes of action including the following: breach of employment contract and failure to repay a promissory note. The causes of action related to Respondent's alleged failure to honor and repay the balance of two promissory notes dated May 16, 2003 and August 2, 2004, hereinafter collectively referred to as "the Notes," which became due upon the termination of Respondent's employment with Morgan Stanley DW, Inc.

**RELIEF REQUESTED**

Claimant requested an award in the amount of:

Actual/Compensatory Damages

\$ 197,509.62

Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

### **OTHER ISSUES CONSIDERED & DECIDED**

Upon review of the file and the representations made on behalf of the Claimant, the undersigned Arbitrator determined that Respondent, Gary A. Rusche, has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent, Gary A. Rusche, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondent, Gary A. Rusche, did not file with the NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

The parties have 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, the testimony, and the evidence presented at the telephonic hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Respondent, Gary A. Rusche, is liable for and shall pay to Claimant, Morgan Stanley DW, Inc., the sum of \$ 92,446.78.62 in compensatory damages relating to the principal owed under the Note dated May 16, 2003;
- 2.) Respondent, Gary A. Rusche, is liable for and shall pay to Claimant, Morgan Stanley DW, Inc., interest on the above-stated sum at the rate of 4% per annum from and including June 10, 2005 through and including November 6, 2006 pursuant to the terms of the May 16, 2003 Note;
- 3.) Respondent, Gary A. Rusche, is liable for and shall pay to Claimant, Morgan Stanley DW, Inc., the sum of \$ 105,062.84 in compensatory damages relating to the principal owed under the Note dated August 2, 2004;
- 4.) Respondent, Gary A. Rusche, is liable for and shall pay to Claimant, Morgan Stanley DW, Inc., interest on the above-stated sum at the rate of

5% per annum from and including June 10, 2005 through and including November 6, 2006 pursuant to the terms of the August 2, 2004 Note;

- 5.) Respondent, Gary A. Rusche, is liable for and shall pay to Claimant, Morgan Stanley DW, Inc., the sum of \$ 8,480.45 in costs pursuant to the terms of the Notes;
- 6.) Respondent, Gary A. Rusche, is liable for and shall pay to Claimant, Morgan Stanley DW, Inc., the sum of \$ 12,444.50 in attorneys' fees pursuant to the terms of the Notes; and
- 7.) Any relief not specifically enumerated is hereby denied with prejudice.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial Claim filing fee = \$ 1,000.00

#### **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 person at the time of the events giving rise to the dispute. In this matter, the member firm is Morgan Stanley DW, Inc.

Member surcharge = \$ 1,700.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$ 2,750.00

#### **Forum Fees and Assessments**

The Panel has assessed forum fees for each hearing 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 last four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel x \$ 1,125.00 = \$ 2,250.00  
Pre-hearing conferences: March 30, 2006 1 session  
June 28, 2006 1 session

One (1) Hearing session x \$ 1,125.00 = \$ 1,125.00  
Hearing Date: November 6, 2006 1 session

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Total Forum Fees = \$ 3,375.00

The Panel has assessed \$ 3,375.00 of the forum fees to Gary A. Rusche.

**FEE SUMMARY**

Claimant, Morgan Stanley DW, Inc., is liable for:

Initial Filing Fee	= \$ 1,000.00
<u>Member Fees</u>	<u>= \$ 5,200.00</u>
Total Fees	= \$ 6,200.00
<u>Less payments</u>	<u>= \$ 7,325.00</u>
Refund Due Claimant	= \$ 1,125.00

Respondent, Gary A. Rusche, is liable for:

<u>Forum Fees</u>	<u>= \$ 3,375.00</u>
Total Fees	= \$ 3,375.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 3,375.00

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

**ARBITRATION PANEL**

Lee T. Beske - Non-Public Arbitrator, Presiding Chair  
Roger D. Johnson - Non-Public Arbitrator  
Elizabeth G. Aby, Esq. - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

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Lee T. Beske  
Non-Public Arbitrator, Presiding Chair

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Signature Date

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Roger D. Johnson  
Non-Public Arbitrator

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Signature Date

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Elizabeth G. Aby, Esq.  
Non-Public Arbitrator

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Signature Date

11/8/06  
Date of Service (For NASD office use only)

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Roger D. Johnson - Non-Public Arbitrator  
Elizabeth G. Aby, Esq. - Non-Public Arbitrator

Concurring Arbitrators' Signatures:



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Non-Public Arbitrator, Presiding Chair

11/08/06  
Signature Date

Roger D. Johnson  
Non-Public Arbitrator

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Elizabeth G. Aby, Esq.  
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