

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Barbara J. Coleman, Claimant v. Morgan Stanley DW Inc. and Learned J. Hand,
Respondents

Case Number: 06-00496

Hearing Site: Los Angeles, California

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

REPRESENTATION OF PARTIES

For Claimant:

Donald E. Karpel, Esq.
Law Offices of Zelner & Karpel
Beverly Hills, California

For Respondent Morgan Stanley DW Inc.:

Kevin K. Fitzgerald, Esq.
Jones, Bell, Abbott, Fleming &
Fitzgerald L.L.P.
Los Angeles, California

For Respondent Learned J. Hand:

No appearance

CASE INFORMATION

Statement of Claim filed: January 27, 2006

Claimant's Uniform Submission Agreement signed: January 12, 2006

Statement of Answer and Motion to Dismiss filed by Respondent Morgan Stanley DW
Inc.: May 30, 2006

Respondent Morgan Stanley DW Inc.'s Uniform Submission Agreement signed:
June 7, 2006

CASE SUMMARY

Claimant alleged financial abuse of an elderly person, intentional infliction of emotional distress, negligence, conversion, and accounting, involving unspecified securities.

Respondent Morgan Stanley DW Inc. denied the allegations of wrongdoing set forth in Claimant's Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested \$500,000.00 in compensatory damages and unspecified costs, including forum fees, attorney's fees, and witness and production fees.

Respondent Morgan Stanley DW Inc. requested dismissal of Claimant's Statement of Claim in its entirety, with prejudice.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Learned J. Hand did not file with NASD Dispute Resolution a properly executed submission agreement, but he is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure ("Code"), and is bound by the determination of the Panel on all issues submitted.

In its Statement of Answer filed on May 30, 2006, Respondent Morgan Stanley DW Inc. included a Motion to Dismiss Claimant's Statement of Claim as barred by the applicable statutes of limitation set forth in Cal. Civ. Proc. Code §335.1 and §338, and Rule 10304 of the Code. On November 3, 2006, Claimant filed an Opposition to Respondent Morgan Stanley DW Inc.'s Motion to Dismiss Claimant's Statement of Claim. On November 10, 2006, Respondent Morgan Stanley DW Inc. filed a Reply to Opposition to Motion to Dismiss. On November 20, 2006, the Arbitration Panel, Claimant, and Respondent Morgan Stanley DW Inc. held a telephonic pre-hearing conference to hear oral argument on Respondent Morgan Stanley DW Inc.'s Motion to Dismiss Claimant's Statement of Claim. Respondent Learned J. Hand did not appear at the pre-hearing conference. After due deliberation, the Panel granted Respondent Morgan Stanley DW Inc.'s Motion to Dismiss.

Upon review of the file and the representations made on behalf of the Claimant, the undersigned Panel determined that Respondent Learned J. Hand was properly served with the Statement of Claim and received due notice of the November 20, 2006 telephonic pre-hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the Code.

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 and testimony presented at the November 20, 2006 telephonic pre-hearing conference, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent Morgan Stanley DW Inc.'s Motion to Dismiss Claimant's Statement of Claim is granted. Claimant's claims against Respondents Morgan Stanley DW Inc. and Learned J. Hand are dismissed with prejudice based on the expiration of applicable statutes of limitation.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) All other relief requested and not expressly granted 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
Hearing Process Fee	= \$ 2,750.00
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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

2 Pre-hearing conference sessions with the Panel @ \$1,125.00/session	= \$ 2,250.00
Pre-hearing conferences: October 12, 2006	1 session
November 20, 2006	1 session

Total Forum Fees	= \$ 2,250.00
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The Panel assessed \$2,250.00 of the forum fees to Claimant.

Fee Summary

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 2,250.00
Total Fees	= \$ 2,550.00
Less payments	= \$(1,425.00)
Balance Due NASD Dispute Resolution	= \$ 1,125.00

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

Member Fees	= \$ 5,200.00
Less payments	= \$(6,450.00)
Refund Due Respondent Morgan Stanley DW Inc.	= \$(1,250.00)

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

Ronald E. Malmfeldt	-	Public Arbitrator, Presiding Chair
Louis P. Davis	-	Public Arbitrator
Edward Banian	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Ronald E. Malmfeldt
Chair, Public Arbitrator

11-20-06

Signature Date

Louis P. Davis
Public Arbitrator

Signature Date

Edward Banian
Non-Public Arbitrator

Signature Date

November 21, 2006

Date of Service

ARBITRATION PANEL

Ronald E. Malmfeldt	-	Public Arbitrator, Presiding Chair
Louis P. Davis	-	Public Arbitrator
Edward Banian	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Ronald E. Malmfeldt
Chair, Public Arbitrator

Signature Date



Louis P. Davis
Public Arbitrator

10/20/06

Signature Date

Edward Banian
Non-Public Arbitrator

Signature Date

November 21, 2006

Date of Service

ARBITRATION PANEL

Ronald E. Malmfeldt	-	Public Arbitrator, Presiding Chair
Louis P. Davis	-	Public Arbitrator
Edward Banian	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Ronald E. Malmfeldt
Chair, Public Arbitrator

Signature Date

Louis P. Davis
Public Arbitrator

Signature Date



Edward Banian
Non-Public Arbitrator

11/21/08
Signature Date

November 21, 2008
Date of Service