

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of Claimant/Counter-Respondent
Morgan Stanley DW, Inc.

vs.

Case Number: 06-00640
Hearing Site: St. Louis, Missouri

Names of Respondents/Counter-Claimants/Third-Party Claimants
Timothy A. Guthrie, Thomas Mulherin, and
Stifel, Nicolaus & Co., Inc.

vs.

Name of Third-Party Respondent
Karl C. Walz

NATURE OF THE DISPUTE

Member vs. Associated Persons and Member

REPRESENTATION OF PARTIES

Morgan Stanley DW, Inc. ("Morgan Stanley" or "Claimant") was represented by Salvador M. Hernandez, Esq. and John R. Jacobson, Esq., Bowen Riley Warnock & Jacobson, PLC, Nashville, Tennessee.

Timothy A. Guthrie ("Guthrie"), Thomas Mulherin ("Mulherin"), and Stifel, Nicolaus & Co., Inc. ("Stifel"), hereinafter collectively referred to as "Respondents," were represented by Eric D. Martin, Esq., Blackwell Sanders Peper Martin, LLP, St. Louis, Missouri.

Karl Walz ("Walz"), hereinafter referred to as Third-Party Respondent, was represented by Salvador M. Hernandez, Esq. and John Jacobson, Esq., Bowen Riley Warnock & Jacobson, PLC, Nashville, Tennessee.

CASE INFORMATION

The Statement of Claim and Temporary Injunctive Relief was filed on or about February 9, 2006. The Submission Agreement of Claimant, Morgan Stanley, was signed on or about February 10, 2006.

The Statement of Answer, Counterclaim and Third-Party Claim was jointly filed by Respondents, Guthrie, Mulherin, and Stifel, on or about April 10, 2006. The Submission

Agreement of Respondent Guthrie was signed on or about February 21, 2005. The Submission Agreement of Respondent Mulherin was signed on or about March 31, 2006. The Submission Agreement of Stifel was signed on or about April 7, 2006.

The Statement of Answer to the Third-Party Claim was filed on or about May 30, 2006. Claimant's Response to the Counterclaim was filed on May 30, 2006.

CASE SUMMARY

Claimant asserted the following causes of action: breach of employment contract, unfair competition; misappropriation; breach of fiduciary duty; and recovery of promissory notes owed by Respondent Guthrie. The causes of action related to the activity of Respondents, Guthrie and Mulherin, in soliciting customers of Morgan Stanley to transfer their accounts to Stifel, Nicolaus & Company, Inc. once they became employed by Stifel. Morgan Stanley asserted that Guthrie and Mulherin violated their Employment Agreements and Account Referral Agreements by misappropriating its confidential and proprietary information in order to solicit business from Morgan Stanley customers. Claimant further asserted that Respondents, Guthrie, Mulherin, and Stifel, gained unjust enrichment for their wrongful conduct.

Unless specifically admitted in their Answer, Respondents, Guthrie, Mulherin, and Stifel, denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim fails to state a claim upon which relief can be granted; the doctrines of waiver, estoppel, ratification, and laches bar Morgan Stanley's claims; Morgan Stanley's claims are barred by the doctrine of unclean hands bars Morgan Stanley's claims; Morgan Stanley's damages, if any, were caused in whole or in part by the negligence and/or fault of Morgan Stanley; Morgan Stanley's damages, if any, were caused in whole or in part by third parties over whom Respondents exercised no direction or control; Morgan Stanley's claims are barred by the statute of frauds and the parole evidence rule; and Morgan Stanley failed to mitigate its damages, if any.

Respondents, Guthrie, Mulherin, and Stifel, asserted the following cause of action in their Counterclaim and Third-Party Claim: defamation. The causes of action related to Morgan Stanley's and Karl C. Walz's efforts to defame Respondents, Guthrie and Mulherin, by making false and defamatory statements to Guthrie's and Mulherin's customers, and such statements caused injury to Respondents' reputation.

Unless specifically admitted in its Answer, Claimant denied the allegations made in the Counterclaim.

Unless specifically admitted in his Answer, Walz denied the allegations made in the Third-Party Claim.

RELIEF REQUESTED

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$521,525.00
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Non-Monetary Relief, if any	Permanent Injunction

Respondents, Guthrie, Mulherin, and Stifel, requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

In the Counterclaim and Third-Party Claim, Respondents, Guthrie, Mulherin, and Stifel, requested an award in the amount of:

Actual/Compensatory Damages	Unspecified
Exemplary/Punitive Damages	Unspecified

Counter-Respondent, Morgan Stanley, requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

Third-Party Respondent, Walz, requested that the claims asserted against him be denied in their entirety and that he be awarded his costs and attorney's fees.

OTHER ISSUES CONSIDERED & DECIDED

In a letter dated February 22, 2006, the parties agreed to waive the expedited hearing on Claimant's request for permanent injunctive relief, to consolidate Claimant's request for permanent injunction with its damages claims, and to proceed to hearing under the normal, unexpedited course.

Third-Party Respondent, Karl C. Walz, 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, having answered the claim, appeared and testified at the hearing, 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, the evidence presented at the hearing and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Respondent, Timothy A. Guthrie, is liable for and shall pay to Claimant, Morgan Stanley DW, Inc., the sum of \$100.00 in compensatory damages;
- 2.) Respondent, Timothy A. Guthrie, is liable for and shall pay to Claimant, Morgan Stanley DW, Inc., interest on the above-stated sum at the rate of 9.50% per annum from and including October 2, 2006 through and including the date the Award is paid in full;
- 3.) Respondent, Thomas Mulherin, is liable for and shall pay to Claimant, Morgan Stanley DW, Inc., the sum of \$100.00 in compensatory damages;
- 4.) Respondent, Thomas Mulherin, is liable for and shall pay to Claimant, Morgan Stanley DW, Inc., interest on the above-stated sum at the rate of 9.50% per annum from and including October 2, 2006 through and including the date the Award is paid in full;
- 5.) Respondent, Stifel, Nicolaus & Co., Inc. is liable for and shall pay to Claimant, Morgan Stanley DW, Inc., the sum of \$1,800.00 in compensatory damages;
- 6.) Respondent, Stifel, Nicolaus & Co., Inc. is liable for and shall pay to Claimant, Morgan Stanley DW, Inc. interest on the above-stated sum at the rate of 9.50% per annum from and including October 2, 2006, until the date the Award is paid in full;
- 7.) The Panel directs that no later than 5:00 p.m. C.D.T. on October 2, 2006, Stifel Nicolaus & Co., Inc. purge from all of its computer systems information relating to former Morgan Stanley DW, Inc. clients of Respondents, Guthrie and Mulherin, who have not transferred their accounts to Stifel Nicolaus & Co., Inc. except names, addresses and telephone numbers. The Panel directs that Stifel Nicolaus & Co., Inc. perform the purge using software that will render the information unrecoverable. Finally, the Panel directs that on or before 5:00 p.m. C.D.T on October 4, 2006, a member of Stifel Nicolaus & Co., Inc.'s senior management provide a sworn affidavit to counsel for Morgan Stanley which attests that Stifel, Nicolaus & Co., Inc. has carried out these directions;
- 8.) The Panel directs that the preliminary injunction entered against Respondents, Timothy A. Guthrie, Thomas Mulherin, and Stifel, Nicolaus & Co., Inc., continue in force until 5:00 p.m. C.D.T. on February 2, 2007;

- 6.) Claimant, Morgan Stanley DW, Inc., is liable for and shall pay to Respondent, Timothy A. Guthrie, the sum of \$ 500.00 in compensatory damages;
- 7.) Claimant, Morgan Stanley DW, Inc. is liable for and shall pay to Respondent, Timothy A. Guthrie, interest on the above-stated sum at the rate of 9.50% per annum from and including October 2, 2006, until the date the Award is paid in full;
- 8.) Claimant, Morgan Stanley DW, Inc., is liable for and shall pay to Respondent, Thomas Mulherin, the sum of \$ 500.00 in compensatory damages;
- 9.) Claimant, Morgan Stanley DW, Inc., is liable for and shall pay to Respondent, Thomas Mulherin, interest on the above-stated sum at the rate of 9.50% per annum from and including October 2, 2006, until the date the Award is paid in full;
- 10.) Third-Party Respondent, Karl C. Walz, is liable for and shall pay to Respondent, Timothy A. Guthrie, the sum of \$ 500.00 in compensatory damages;
- 11.) Third-Party Respondent, Karl C. Walz, is liable for and shall pay to Respondent, Timothy A. Guthrie, interest on the above-stated sum at the rate of 9.50% per annum from and including October 2, 2006, until the date the Award is paid in full;
- 12.) Third-Party Respondent, Karl C. Walz, is liable for and shall pay to Respondent, Thomas Mulherin, the sum of \$ 500.00 in compensatory damages;
- 13.) Third-Party Respondent, Karl C. Walz, is liable for and shall pay to Respondent, Thomas Mulherin, interest on the above-stated sum at the rate of 9.50% per annum from and including October 2, 2006, until the date the Award is paid in full;
- 14.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 15.) Any relief not specifically enumerated, including punitive damages and attorneys' fees, 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 fees for each claim:

Initial Claim filing fee	= \$ 1,250.00
Counterclaim/Third-Party Claim filing fee	= \$ 500.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. In this matter, the member firms are Morgan Stanley DW, Inc., and Stifel, Nicolaus & Co., Inc.

Member surcharge	= \$ 2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 4,000.00

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who filed a temporary injunction in court. Parties in these cases are also assessed arbitration travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing on permanent injunction. These fees, except for the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel:

Member firm, Morgan Stanley DW, Inc., is assessed:	
Injunctive relief surcharge	= \$ 2,500.00

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, which lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator x \$450.00 = \$ 450.00
Pre-hearing conference: August 21, 2006 1 session

One (1) Pre-hearing session with Panel x \$1,200.00 = \$ 1,200.00
Pre-hearing conference: April 17, 2006 1 session

Six (6) Hearing sessions x \$1,200.00 = \$ 7,200.00
Hearing Dates: September 12, 2006 2 sessions
September 13, 2006 2 sessions
September 14, 2006 2 sessions

Total Forum Fees = \$ 8,850.00

The Panel has assessed \$4,425.00 of the forum fees to jointly and severally to Claimant, Morgan Stanley DW, Inc. and Third-Party Respondent, Karl C. Walz.

The Panel has assessed \$4,425.00 of the forum fees jointly and severally to Respondents, Timothy A. Guthrie, Thomas Mulherin, and Stifel, Nicolaus & Co., Inc.

FEE SUMMARY

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

Initial Filing Fee	= \$ 1,250.00
Member Fees	= \$ 7,000.00
Injunctive Relief Fee	= \$ 2,500.00
<u>Total Fees</u>	= \$10,750.00
<u>Less payments</u>	= \$10,700.00
Balance Due NASD Dispute Resolution	= \$ 50.00

Respondent, Stifel, Nicolaus & Co., Inc. is liable for:

Member Fees	= \$ 7,000.00
<u>Less payments</u>	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Claimant, Morgan Stanley DW, Inc., and Third-Party Respondent, Karl C. Walz, are jointly and severally liable for:

Forum Fees	= \$ 4,425.00
<u>Less payments</u>	= \$ 1,250.00
Balance Due NASD Dispute Resolution	= \$ 3,175.00

Respondents, Timothy A. Guthrie, Thomas Mulherin, and Stifel, Nicolaus & Co., Inc.,
are jointly and severally liable for:

Forum Fees	= \$ 4,425.00
<u>Less payments</u>	<u>= \$ 4,000.00</u>
Balance Due NASD Dispute Resolution	= \$ 425.00

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

ARBITRATION PANEL

Mark R. Lee - Public Arbitrator, Presiding Chair
Walter N. Vernon, III, Esq. - Public Arbitrator
Kimberly Renee McBride - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

/s/ Mark R. Lee
Mark R. Lee
Public Arbitrator, Presiding Chair

9/29/06
Signature Date

/s/ Walter N. Vernon, III, Esq.
Walter N. Vernon, III, Esq.
Public Arbitrator

9/29/06
Signature Date

/s/ Kimberly Renee McBride
Kimberly Renee McBride
Non-Public Arbitrator

10/10/06
Signature Date

9/29/06
Date of Service (For NASD office use only)

Claimant, Morgan Stanley DW, Inc., and Third-Party Respondent, Karl C. Walz, are jointly and severally liable for:

Forum Fees	= \$ 4,425.00
<u>Less payments</u>	<u>= \$ 1,250.00</u>
Balance Due NASD Dispute Resolution	= \$ 3,175.00

Respondents, Timothy A. Guthrie, Thomas Mulherin, and Stifel, Nicolaus & Co., Inc., are jointly and severally liable for:

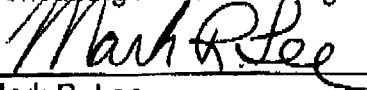
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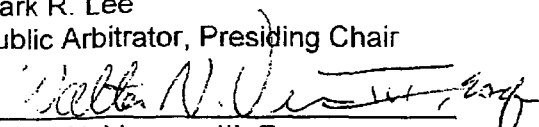
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Public Arbitrator

Signature Date



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Non-Public Arbitrator

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Balance Due NASD Dispute Resolution = \$ 0.00

Claimant, Morgan Stanley DW, Inc., and Third-Party Respondent, Karl C. Walz, are jointly and severally liable for:

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