

NASD REGULATION, INC.
AWARD

In the Matter of the Arbitration Between

Name of Claimant

Morgan Stanley & Co., Inc.

Name of Respondent

96-04013

Steven Yamane

Third-Party Respondent

Barry Davis

REPRESENTATION

For Claimant Morgan Stanley & Co., Inc. ("Morgan Stanley") and Third-Party Respondent Barry Davis ("Davis") appeared Jerry Fortinsky, Esq., of the law offices of Shearman & Sterling, located in New York, New York.

For Respondent Steven Yamane ("Yamane") appeared John Cambria, Esq., of the law offices of Christy & Viener, located in New York, New York.

CASE INFORMATION

Morgan Stanley's Statement of Claim was filed on September 6, 1996. Morgan Stanley's Reply to Counterclaims was filed on November 15, 1996. Morgan Stanley's Submission Agreement was signed on September 6, 1996.

Yamane's Statement of Answer and Counterclaims was filed on November 4, 1996. Yamane's Submission Agreement was signed on October 29, 1996.

Davis' Reply to Counterclaims was filed on November 15, 1996. Davis did not file a Submission Agreement.

The parties' Statement of Agreement to Arbitrate Pursuant to NASD Code of Arbitration Procedure Rule 10334 was filed on April 3, 1997.

HEARING INFORMATION

Pre-Hearing Conferences:	May 10, 1997	-	One Session
	September 15, 1997	-	One Session
	December 15, 1997	-	Two Sessions - Full Panel
	February 3, 1998	-	One Session - Full Panel
Hearing Dates/Sessions:	January 26, 1998	-	Two Sessions
	January 27, 1998	-	Two Sessions
	March 3, 1998	-	Two Sessions
	March 4, 1998	-	Two Sessions
	March 10, 1998	-	Two Sessions
	March 11, 1998	-	Two Sessions
	May 7, 1998	-	Two Sessions
	May 11, 1998	-	Two Sessions
	May 18, 1998	-	Two Sessions
	July 17, 1998	-	Two Sessions

The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

CASE SUMMARY

Morgan Stanley alleged that Yamane, a managing director of Morgan Stanley and head of its equity trading operations in Japan and South Korea, announced in late August 1996 that he was resigning from Morgan Stanley to establish an Asian equity trading and derivatives unit at NatWest, a competitor. Morgan Stanley further alleged that Yamane, before announcing his resignation, used information that was proprietary and confidential to Morgan Stanley to begin developing NatWest's trading operations and to inform NatWest how much money would be required to hire numerous, specifically identified Morgan Stanley employees reporting to him. Morgan Stanley asserted that, at the same time Yamane was proposing compensation levels for NatWest to offer his subordinates to lure them away from Morgan Stanley, he was also recommending to Morgan Stanley that it offer these employees substantially smaller raises, thus making it easier for NatWest to recruit them. Morgan Stanley alleged that Yamane's actions constituted breaches of his contractual and fiduciary duties to Morgan Stanley.

Yamane maintained that he never disclosed information to NatWest or anyone else, and that the Statement of Claim is an attempt to defame him and deprive him of millions of dollars in earned compensation, to deter other high-level Morgan Stanley employees from leaving the company, and to interfere vengefully with his career. Yamane alleged that, subsequent to his resignation, Morgan Stanley and Davis fabricated a false, improper and illegal fiction that he had been "terminated for cause." Yamane further alleged that Morgan Stanley, relying on this fabrication, has withheld over \$4 million in earned compensation benefits to which he is entitled. Yamane asserted that Morgan Stanley breached its contract, breached its fiduciary duty, and withheld his entitlement to stock units, stock options and other benefits. Yamane further asserted that Morgan Stanley and Davis engaged in defamation by filing a false Form U-5 and making false

and defamatory statements about him and his reasons for leaving the employ of Morgan Stanley.

Morgan Stanley and Davis denied the allegations contained in the counterclaims. Morgan Stanley and Davis maintained that all of Yamane's benefits were forfeited when he was terminated with cause and that all statements made about Yamane's departure from Morgan Stanley were true and subject to an absolute and qualified privilege.

RELIEF REQUESTED

Morgan Stanley requested:

- (a) An award against Yamane restraining, enjoining, and prohibiting him and all those acting in concert with him from: (i) directly or indirectly soliciting Morgan Stanley's employees to leave the employ of Morgan Stanley; (ii) directly or indirectly soliciting customers of Morgan Stanley that are not currently customers of NatWest; (iii) using in any way any non-public or proprietary Morgan Stanley customer information including, but not limited to, the contents of customer portfolios or customer investment or trading strategies; (iv) using in any way any proprietary products, research or strategies of Morgan Stanley including, but not limited to, those relating to derivative products; (v) using in any way any proprietary Morgan Stanley systems, including, but not limited to, risk analysis programs such as Equity Risk, RiskMan, and RiskControl.
- (b) An award against Yamane restraining, enjoining, and prohibiting him from engaging in, and all others acting in concert with him, from participating in further breaches of Yamane's contractual duties to Morgan Stanley.
- (c) An award against Yamane restraining, enjoining, and prohibiting him, and all others acting in concert with him, from using, taking advantage of or receiving any monetary or other benefit from any proprietary or confidential information belonging to Morgan Stanley, or from any breach of fiduciary duty by Yamane while still employed by Morgan Stanley.
- (d) An award against Yamane requiring him to account for and pay over to Morgan Stanley all damages suffered by Morgan Stanley and all profits wrongfully derived by him as a result of his breaches of contract and his breaches of fiduciary duty, and imposing a constructive trust upon all money he receives as a result of his wrongful activities.
- (e) An award requiring Yamane to pay to Morgan Stanley its interest, costs, disbursements and reasonable attorneys' fees, and granting Morgan Stanley such other and further relief as the arbitral tribunal deems just and proper.

Yamane requested an award against Morgan Stanley and Davis:

- (a) Dismissing the Statement of Claim in its entirety;
- (b) Actual damages in an amount to be determined at the arbitration hearing, but not less than \$4.1 million;
- (c) Special damages and damages for mental anguish, humiliation, embarrassment, and emotional injury, in an amount to be determined at the hearing;
- (d) Punitive damages in an amount to be determined at the hearing;
- (e) An order declaring that Yamane is entitled to certain benefits under the EICP, the

Overseas Plan, and the Voluntary Plan, in an amount to be determined at the hearing, but not less than \$4.1 million;

- (f) An order declaring that Yamane's employment with Morgan Stanley was terminated by reason of his voluntary resignation, that he was not terminated for cause, and that he committed no breach of duty to Morgan Stanley;
- (g) An order directing that the Form U-5 filed by Morgan Stanley be expunged, and that Morgan Stanley file a new Form U-5 stating that Yamane's employment with Morgan Stanley terminated by reason of his voluntary resignation;
- (h) An order permanently enjoining Davis and Morgan Stanley, its subsidiaries, affiliates, officers, agents, servants, employees, attorneys, and all those persons acting in concert or participation with them, from publishing false and defamatory statements of and concerning Yamane;
- (i) Yamane's costs, including reasonable attorneys' fees, incurred in this arbitration, as well as pre- and post-award interest; and
- (j) Such other and further relief as the arbitration panel may deem just and proper.

OTHER ISSUES CONSIDERED & DECIDED

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. In either case, the parties have agreed to receive conformed copies of the Award while the original remains on file with the NASD.

The panel made the following determinations concerning Davis, who did not file a Submission Agreement:

- 1. Pursuant to Rule 10101 of the Code of Arbitration Procedure (the "Code"), the arbitrators found subject matter jurisdiction over this entire controversy.
- 2. The panel found that Davis was a person associated with a member of the NASD at the time this controversy arose. Accordingly, the panel found personal jurisdiction over Davis pursuant to Rule 10201 of the Code.
- 3. The panel found that Davis was required to file a Submission Agreement with NASD Regulation pursuant to Rule 10314(b) of the Code.

AWARD

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

- 1. The panel hereby orders Morgan Stanley to restore Yamane to all his vested awards and benefits under the Equity Incentive Compensation Plan ("EICP") as if such awards were never forfeited, and such forfeiture is hereby rescinded, which such awards (consisting of 69,775 shares of Morgan Stanley, Dean Witter, Discover & Co. ("MSDW") stock and 29,363 MSDW stock options as of May

18, 1998 per Supplemental Joint Statement of Stipulated Facts by the parties) shall include any and all dividend equivalents and accruals thereon from the date of forfeiture.

2. Morgan Stanley is hereby ordered to file a corrective Form U-5 reflecting that Steven Yamane voluntarily resigned from Morgan Stanley.
3. Yamane's request for an expungement is hereby denied.
4. Morgan Stanley's claims against Yamane are hereby denied.
5. Yamane's claims against Davis are hereby denied.
6. The parties shall bear their respective costs, including attorneys' fees.
7. All other relief requests contained in the Statement of Claim and Counterclaims are denied.

OTHER COSTS

Pursuant to Rule 10333 of the Code of Arbitration Procedure, Morgan Stanley shall pay to NASD Regulation, Inc. the \$350.00 past due member surcharge previously invoiced.

FORUM FEES

Pursuant to Rule 10205(c) of the NASD Regulation Code of Arbitration Procedure, the arbitrators have determined that the NASD will retain the \$500.00 non-refundable filing fee paid by Morgan Stanley and the \$500.00 non-refundable filing fee paid by Yamane, and have assessed the following Forum Fees:

2 Pre-hearing conferences x \$300.00	=	\$ 600.00
3 Pre-hearing sessions (full panel) x \$1,000.00	=	\$ 3,000.00
20 Hearing sessions x \$1,000.00	=	<u>\$20,000.00</u>
Total Forum Fees	=	\$23,600.00

1. Morgan Stanley is hereby liable for and shall pay the sum of \$11,800.00, representing one-half of the forum fees assessed. Morgan Stanley previously deposited \$600.00 with NASD Regulation, Inc., and, therefore, shall remit the \$11,200.00 remaining balance.
2. Yamane is hereby liable for and shall pay the sum of \$11,800.00, representing one-half of the total forum fees assessed. Yamane previously deposited \$1,000.00 with NASD Regulation, Inc., and, therefore, shall remit the \$10,800.00 remaining balance.

Fees are payable to NASD Regulation, Inc.

ARBITRATION PANEL

Joseph J. Arata, Esq.	-	Public Chairperson
Richard W. Vallario, Esq.	-	Public Arbitrator
John J. O'Neill, Esq.	-	Industry Arbitrator


CONCURRING ARBITRATOR'S SIGNATURE



Richard W. Vallario, Esq.
Public Arbitrator

Date of decision: September 8, 1998

I, Richard W. Vallario, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Richard W. Vallario, Esq.

ARBITRATION PANEL

Joseph J. Arata, Esq.	-	Public Chairperson
Richard W. Vallario, Esq.	-	Public Arbitrator
John J. O'Neill, Esq.	-	Industry Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE



Joseph J. Arata, Esq.
Chairperson - Public Arbitrator

Date of decision: September 8, 1998

I, Joseph J. Arata, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.




Joseph J. Arata, Esq.

ARBITRATION PANEL

Joseph J. Arata, Esq.	-	Public Chairperson
Richard W. Vallario, Esq.	-	Public Arbitrator
John J. O'Neill, Esq.	-	Industry Arbitrator

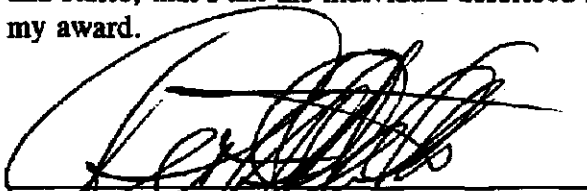
CONCURRING ARBITRATOR'S SIGNATURE



John J. O'Neill, Esq.
Industry Arbitrator

Date of decision: September 8, 1998

I, John J. O'Neill, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



John J. O'Neill, Esq.