

**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Name of the Claimant
Jordan Weinerman

Case Number: 05-02371

Name of the Respondent
Morgan Stanley DW, Inc. d/b/a
Morgan Stanley

Hearing Site: Boca Raton, Florida

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

Jordan Weinerman ("Weinerman"), hereinafter referred to as "Claimant": Jeffrey Erez, Esq. and Jeffrey R. Sonn, Esq., Sonn & Erez, Fort Lauderdale, Florida.

Morgan Stanley DW, Inc. d/b/a Morgan Stanley ("MSDW"), hereinafter referred to as "Respondent": Todd A. Zuckerbrod, Esq., Greenberg Traurig, West Palm Beach, Florida.

CASE INFORMATION

Statement of Claim filed on or about: May 5, 2005.

Claimant signed the Uniform Submission Agreement: May 4, 2005.

Statement of Answer filed by Respondent on or about: June 29, 2005.

Respondent signed the Uniform Submission Agreement: June, 20, 2005.

Motion to Add a Necessary and Indispensable Party filed by Respondent on or about: August 16, 2006.

Motion to Reconsider the Panel's Order to Add a Necessary and Indispensable Party filed by Claimant on or about: September 14, 2006.

Motion to Dismiss for Failure to Comply with Panel's Order filed by Respondent on or about: September 27, 2006.

Response to Respondent's Motion to Add a Necessary and Indispensable Party filed by Claimant on or about: October 3, 2006.

Reply to Claimant's Response to Respondent's Motion to Add a Necessary and Indispensable Party filed by Respondent on or about: October 5, 2006.

CASE SUMMARY

Claimant asserted the following causes of action: 1) breach of fiduciary duty; 2) negligence; and 3) negligent supervision. The causes of action relate to Claimant's investments in, including but limited to, technology focused funds, growth stock mutual funds and proprietary mutual funds including B shares and Unit Investment Trusts.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested: 1) compensatory damages in an amount between \$500,000.00 and \$1,000,000.00; 2) unspecified punitive damages; 3) interest; 4) attorneys' fees; 5) costs; and 6) other relief deemed just.

Respondent requested that Claimant's claims be dismissed in their entirety.

OTHER ISSUES CONSIDERED AND DECIDED

On or about September 12, 2006, the Panel issued an order granting Respondent's Motion to Add a Necessary and Indispensable Party subject to Claimant having not responded to the motion.

On or about October 6, 2006, the Panel issued an order denying Respondent's Motion to Dismiss, granting Claimant's Motion to Reconsider the Panel's Order to Add a Necessary and Indispensable Party and denying Respondent's Motion to Add a Necessary and Indispensable Party.

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

Respondent is found liable under the causes of action of breach of fiduciary duty and negligent supervision and shall pay to Claimant compensatory damages in the amount of Six Hundred Thousand Dollars and 00/100 (\$600,000.00). In addition thereto, Respondent shall pay the amount of Two Hundred Fifty Thousand Dollars and 00/100 (\$250,000.00) as punitive damages. Claims for post judgment interest are granted, at the legal rate in Florida, to run from the date of service of this Award until the date the Award is paid. Claims for pre-judgment interest are hereby denied.

The punitive damages are imposed for the reason that the Panel found the Respondent guilty of conduct justifying the award of punitive damages in that Respondent's agent, Kyle Boos ("Boos") knew and had actual knowledge of the wrongfulness of his conduct and the high probability that injury or damage to Claimant would result, but despite such knowledge, intentionally pursued the course of conduct which resulted in damage to Claimant. His conduct included

hundreds of unsuitable solicited trades in Claimant's account where Claimant was retired and in his 70s and all of the written documentation clearly showed that his primary objective was income.

Further, Respondent MSDW was the employer of the agent Boos committing the specified acts and that the employer actively and knowingly participated in such conduct and/or knowingly condoned, ratified and consented to such conduct in that:

- 1) The employer knew of the unsuitable solicited trades being made in Claimant's account to the extent that there were over twenty (20) exception reports (CAR reports) filed with regard to such conduct.
- 2) That supervisors were aware of such conduct through the receipt of the CAR reports; through discussions with the agent and that the branch managers and compliance department, by implication, condoned and consented to such conduct by their receipt of the CAR reports, discussions with the employee and approval and ratification of the employee's conduct without any corrective action being taken.
- 3) The actions of the employee and the knowledge on the part of the employer are found in evidence regarding the compliance department's CAR reports, other communications, and the manager's direct discussions with the employee regarding such conduct.
- 4) Respondent MSDW located the telephone records of the branch office but inexplicably could not find or otherwise produce such records at the hearing.
- 5) Boos, as Respondent's agent, inherited Claimant's account at a time when the stated objective was "income". Within 45 days (approximately) the account had significantly changed and much (or many) of the investments made in that time period was other than "income" and much of it was MSDW proprietary products.
- 6) No substantial remedial action in the trading in Claimant's account occurred after actual knowledge by Respondent agent's superiors.
- 7) That the evidence regarding the misconduct of agent Boos was based on clear and convincing evidence. The Panel further finds that Respondent had actual knowledge of the wrongfulness of the conduct and the high probability that damage to Claimant would result and, despite that knowledge, intentionally pursued that course of conduct resulting in damage.
- 8) That the employer, MSDW, a corporation, is liable for punitive damages for the conduct of the employee or agent for the reason that MSDW

actively and knowingly participated in such conduct and/or knowingly condoned and certainly ratified and consented to such conduct.

Any and all claims for relief not specifically addressed herein is denied.

FEES

Pursuant to the Code of Arbitration Procedures (the "Code"), the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$375.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, MSDW is a party and a member firm.

Member surcharge	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$4,000.00</u>
Total Member fees	= \$7,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

October 16 – 20, 2006 adjournment requested by Claimant = \$1,200.00

The Panel has assessed \$1,200.00 of the adjournment fees to Claimant.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

There were no three-day cancellation fees assessed during these proceedings.

Injunctive Relief Fees

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

There were no injunctive fees assessed during these proceedings.

Forum Fees and Assessments

The Panel has 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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), which lasts four (4) hours or less. Fees associated with these proceedings are:

Five (5) Pre-hearing sessions with a single arbitrator @ \$450.00/session	= \$2,250.00
Pre-hearing conferences:	
November 30, 2005	1 session
January 5, 2006	1 session
April 27, 2006	1 session
August 22, 2006	1 session
June 6, 2007	1 session
Three (3) Pre-hearing sessions with Panel @ \$1,200.00/session	= \$3,600.00
Pre-hearing conferences:	
August 31, 2005	1 session
October 5, 2006	1 session
October 11, 2006	1 session
Twelve (12) Hearing sessions @ \$1,200.00/session	= \$14,400.00
Hearing Dates:	
June 11, 2007	3 sessions
June 12, 2007	2 sessions
June 13, 2007	2 sessions
June 14, 2007	2 sessions
June 15, 2007	3 sessions
<hr/> Total Forum Fees	<hr/> = \$20,250.00

The Panel has assessed \$20,250.00 of the forum fees to Respondent.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative fees assessed during these proceedings.

Fee Summary

Claimant Weinerman is solely liable for:

Initial Filing Fee	= \$ 375.00
<u>Adjournment Fee</u>	<u>= \$ 1,200.00</u>
Total Fees	= \$ 1,575.00
<u>Less payments</u>	<u>= \$ 1,575.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent MSDW is solely liable for:

Member Fees	= \$ 7,000.00
Forum Fees	= \$20,250.00
Total Fees	= \$27,250.00
<u>Less payments</u>	<u>= \$ 7,750.00</u>
Balance Due NASD Dispute Resolution	= \$19,500.00

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

ARBITRATION PANEL

Richard K. Wilson, Esq. - Public Arbitrator, Presiding Chairperson
Perry Phillips - Public Arbitrator
Bernard Hornick - Non-Public Arbitrator

Concurring Arbitrators' Signatures

 /s/
Richard K. Wilson, Esq.
Public Arbitrator, Presiding Chairperson

July 6, 2007
Signature Date

 /s/
Perry Phillips
Public Arbitrator

July 6, 2007
Signature Date

 /s/
Bernard Hornick
Non-Public Arbitrator

July 6, 2007
Signature Date

July 6, 2007
Date of Service (For NASD Dispute Resolution use only)

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Public Arbitrator, Presiding Chairperson

7/06/07
Signature Date

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Public Arbitrator

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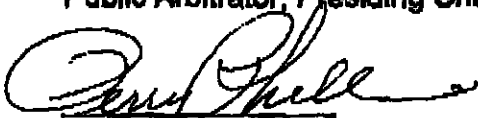
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Perry Phillips	-	Public Arbitrator
Bernard Hornick	-	Non-Public Arbitrator

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Public Arbitrator, Presiding Chairperson

Signature Date

Perry Phillips
Public Arbitrator

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