Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants
John Robert Zalar
Carolyne R. Zalar
Carolyne Zalar and John Robert Zalar JTTEN
Carolyne Rae Zalar IRA
John R. Zalar-Nicholas
Zalar Auto Supply, Inc.

Case Number: 03-06112

Name of the Respondent
Morgan Stanley DW, Inc.

Hearing Site: Orlando, Florida

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For John Robert Zalar; Carolyne R. Zalar; Carolyne Zalar and John Robert Zalar JTTEN; Carolyne Rae Zalar IRA; John R. Zalar-Nicholas; and Zalar Auto Supply, Inc., hereinafter collectively referred to as "Claimants": Scott L. Silver, Esq., Blum, Silver & Schwartz, LLP, Coral Springs, Florida.

For Morgan Stanley DW, Inc., hereinafter referred to as "Respondent": Peter W. Homer, Esq., Homer & Bonner, P.A., Miami, Florida.

CASE INFORMATION

Statement of Claim filed on or about: August 22, 2003.

Claimants signed the Uniform Submission Agreement on: September 3, 2003.

Statement of Answer, Defenses and Counterclaim filed on or about: October 24, 2003.

Respondent signed the Uniform Submission Agreement on: October 20, 2003.

CASE SUMMARY

Claimants alleged the following causes of action: 1) breach of fiduciary duty; 2) suitability; 3) negligence; 4) negligent supervision; 5) violation of Florida statutes, including but not limited to Chapter 517, Florida Statutes; 5) violation of industry rules; 6) breach of contract; and 7) common law fraud. The causes of action relate to investments in various securities, including shares of stock in Oracle and Dell.

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

Respondent alleged a cause of action for indemnification against Claimants John Robert Zalar and Carolyne R. Zalar to the extent they assert claims for losses in the Managed Accounts.

RELIEF REQUESTED

Claimants requested: 1) compensatory damages in the amount of approximately $400,000.00; 2) interest; 3) rescission; 4) reasonable attorneys' fees to be determined by a court of competent jurisdiction; 5) punitive damages; 6) costs; and 7) such other relief the undersigned arbitrators (the "Panel") deemed just and proper.

Respondent requested: 1) that Claimants' claims be denied in their entirety; 2) indemnification against Claimants John Robert Zalar and Carolyne R. Zalar; and 3) costs and attorneys' fees to be determined by a court of competent jurisdiction.

OTHER ISSUES CONSIDERED AND DECIDED

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, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable and shall pay to Claimants compensatory damages in the amount of $89,000.00, pre-judgment interest denied. The Panel finds Respondent liable on the claim of negligence. The Panel does not find Respondent liable on all other claims, including statutory claims under Chapter 517, Florida Statutes.

2. Claimants' request for punitive damages is denied.

3. While the Panel finds that Claimants failed to prove a violation of Chapter 517, Florida Statutes, the Panel unanimously agrees that it would be manifestly unjust to award the Respondent attorneys' fees as the prevailing party under Chapter 517, Florida Statutes.

4. Respondent's counterclaim is denied.

5. Any and all claims or relief not specifically addressed herein are denied.

FEES

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

Filing Fees

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

Initial claim filing fee	= $ 300.00
Counterclaim 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. Accordingly, Respondent is a member firm and a party.

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

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments requested during these proceedings for which fees were assessed.

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 relief fees assessed during these proceedings.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. 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:

Two (2) Pre-hearing sessions with Panel @ $1,125.00 per session			= $ 2,250.00
Pre-hearing conferences:	March 16, 2004	1 session	
	January 12, 2005	1 session	
Nine (9) Hearing sessions @ $1,125.00 per session			= $10,125.00
Hearing Dates:	February 15, 2005	2 sessions	
	February 16, 2005	2 sessions	

February 17, 2005	3 sessions
February 18, 2005	2 sessions

Total Forum Fees = $12,375.00

The Panel has assessed forum fees in the amount of $6,187.50 jointly and severally to Claimants.

The Panel has assessed forum fees in the amount of $6,187.50 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 costs incurred during these proceedings.

Fee Summary

Claimants are jointly and severally liable for:

Initial Filing Fee	= $ 300.00
Forum Fees	= $ 6,187.50
Total Fees	= $ 6,487.50
Less payments	= $ 1,425.00
Balance Due NASD Dispute Resolution	= $ 5,062.50

Respondent is solely liable for:

Counterclaim Filing Fee	= $ 1,000.00
Member Fees	= $ 5,200.00
Forum Fees	= $ 6,187.50
Total Fees	= $12,387.50
Less payments	= $10,075.00
Balance Due NASD Dispute Resolution	= $ 2,312.50

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

ARBITRATION PANEL

Brian G. Mooney, Esq.	-	*Public Arbitrator, Presiding Chairperson*
Charles Tindell, Esq.	-	*Public Arbitrator*
Herbert Schwartz	-	*Non-Public Arbitrator*

Concurring Arbitrators' Signatures

/s/
Brian G. Mooney, Esq.
Public Arbitrator, Presiding Chairperson

February 28, 2005
Signature Date

/s/
Charles Tindell, Esq.
Public Arbitrator

February 28, 2005
Signature Date

/s/
Herbert Schwartz
Non-Public Arbitrator

February 28, 2005
Signature Date

February 28, 2005
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Brian G. Mooney, Esq.
Public Arbitrator, Presiding Chairperson

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Signature Date

Charles Tindell, Esq.
Public Arbitrator

Signature Date

Herbert Schwartz
Non-Public Arbitrator

Signature Date

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