

SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: Hon. Eileen Bransten (Acting A.J.)
Administrative Order

MORGAN STANLEY DW INC.,

Petitioner,

- v -

INDEX NO. 113596/06

BRIAN MCLOUGHLIN and ANDREW R.
DU PONT,

Respondents.

Administrative Order:

By letter dated September 25, 2006, counsel for respondents seeks to transfer this special proceeding to the Commercial Division pursuant to Uniform Rule 202.70. Petitioner's counsel opposes respondents' application.

Respondents' counsel contends that this "action" meets the standards for assignment to the Commercial Division set forth in Uniform Rule 202.70(b)(1), because it arises out of claims by Morgan Stanley DW Inc. that respondents McLoughlin and du Pont, two of its former financial advisors, violated the restrictive covenants in their employment applications by going to work for a competitor and taking trade secrets with them. Although respondents' counsel states in his letter that a copy of the Verified Petition is attached to his letter, no such copy was, in fact, attached to his letter, and thus I am unable to determine whether the matter deserves Commercial Division treatment.

From petitioner's counsel's letter, I am informed that this case is not a plenary action, but a special proceeding brought pursuant to CPLR Article 75 seeking injunctive relief in aid of NASD arbitration. Justice Emily Jane Goodman issued a temporary restraining order on September 21, 2006, and set a hearing on the application for injunctive relief on October 3, 2006. I am also told that the issuance of the TRO mandates that an expedited evidentiary hearing before the NASD be commenced by October 6, 2006. Accordingly, I am concerned that a transfer of this special proceeding at this point in time to a Commercial Division justice may interfere with the arbitration

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process.

For these reasons, respondents' request to transfer this action to the Commercial Division is denied, and the parties are directed to proceed with the hearing before Justice Goodman on October 3, 2006.

Dated: October 2, 2006

ENTER: Eileen Bransten A.J.
Eileen Bransten

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION