

**AWARD**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between

Name of Claimant

Niels C. Roberts

and

01-00300  
Phoenix, Arizona

Name of Respondents

Morgan Stanley DW Inc.  
Mark A. Lavach

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**REPRESENTATION OF PARTIES**

Niels C. Roberts ("**Claimant**") was represented by Robert D. Mitchell, Esq., of Mitchell Law Offices, P.C., Phoenix, Arizona.

Morgan Stanley DW Inc. ("**Respondent MSDW**") and Mark A. Lavach ("**Respondent Lavach**") were represented by Patricia A. Gomez, Esq. and Ronald E. Wood, Esq., Morgan Stanley DW Inc., Santa Ana, California.

**CASE INFORMATION**

The Statement of Claim was filed on or about January 19, 2001. Submission Agreement of Claimant Niels C. Roberts was signed on January 10, 2001.

Respondents' Answer and Affirmative Defenses was filed by Morgan Stanley DW Inc. and Mark A. Lavach on or about April 4, 2001. Anne Tennant Cooney signed Submission Agreement of Respondent Morgan Stanley DW Inc. on March 30, 2001. Submission Agreement of Respondent Mark A. Lavach was signed on February 5, 2001.

**CASE SUMMARY**

Claimant submitted the following summary:

Niels Roberts alleged that the Respondents Morgan Stanley Dean Witter and Mark Lavach were negligent, breached their fiduciary duty, and violated other applicable statutory and common law by failing to prudently and suitably manage Mr. Roberts' brokerage account with the Respondents between June of 1999 and January of 2001, resulting in portfolio principal losses in excess of \$144,022.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that Claimant was well aware of the type of stocks he was purchasing and selling in his account. It was stated by Respondents that the names of the stocks alone would put any reasonable investor on notice that he was not purchasing Dupont or Phillip Morris. Respondents further stated that Claimant used MSDW's "Client Serve" software to enable him to view his account "online" in "real time." It was stated that claimant authorized the transactions in his account and understood the risks associated with the investment strategy used.

### **RELIEF REQUESTED**

Claimant Roberts sought recovery of his account losses, pre- and post-award interest, attorney's fees and costs totaling \$210,000. Claimant also requested an award of punitive damages.

Respondents requested that the Statement of Claim be dismissed in its entirety.

### **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(s) remain on file with the NASD Dispute Resolution, Inc. (the "NASD").

### **AWARD**

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

1. All claims against Respondent Lavach are dismissed.
2. The claimant is awarded compensatory damages in the total sum of \$150,000 (**One Hundred Fifty Thousand Dollars and no Cents**) against Morgan Stanley Dean Witter (MSDW). That sum is inclusive of all attorneys fees and pre-award interest.
3. Interest of 10% per annum shall run on the above amount from the date of the award until paid.
4. No exemplary damages are awarded.
5. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.

6. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee = \$300.00

#### **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. In this matter, the member firm(s) is(are) Morgan Stanley DW Inc.

Member surcharge = \$1,500.00  
Pre-hearing process fee = \$ 600.00  
Hearing process fee = \$2,500.00

#### **Adjournment Fees**

Adjournments requested during these proceedings:

Hearing Date(s), October 15-17, 2001 adjournment resulting from the administrative stay of proceedings granted by NASD Dispute Resolution, Inc. following the September 11, 2001 World Trade Center attack. = \$ 0.00  
Hearing Date(s), April 18 & 19, 2001 adjournment requested by party = \$1,125.00

#### **Forum Fees and Assessments**

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

|  |              |
|--|--------------|
| One (1) Pre-hearing session(s) with Panel x \$1,125.00 | = \$1,125.00 |
| Pre-hearing conference(s): July 24, 2001 1 session     |              |
| Four (4) Hearing sessions x \$1,125.00                 | = \$4,500.00 |
| Hearing Date(s): May 14, 2002 2 sessions               |              |
| May 15, 2002 2 session                                 |              |
| Total Forum Fees                                       | = \$5,625.00 |

The Arbitration Panel has assessed \$5,625.00 of the forum fees to Morgan Stanley DW Inc.

**Fee Summary**

Claimant, Niels C. Roberts, shall be and hereby is liable for:

|   |                     |
|---|---------------------|
| Initial Filing Fee                                      | = \$ 300.00         |
| <u>Forum Fees</u>                                       | = \$ 0.00           |
| Total Fees  | = \$ 300.00         |
| <u>Less payments</u>                                    | = <u>\$1,425.00</u> |
| Balance to be refunded by NASD Dispute Resolution, Inc. | = \$1,125.00        |

Respondent, Morgan Stanley DW Inc., shall be and hereby is liable for:

|   |                      |
|---|----------------------|
| Member Fees                               | = \$ 4,600.00        |
| Adjournment Fee                           | = \$ 1,125.00        |
| <u>Forum Fees</u>                         | = <u>\$ 5,625.00</u> |
| Total Fees                                | = \$11,350.00        |
| <u>Less payments</u>                      | = <u>\$ 4,600.00</u> |
| Balance Due NASD Dispute Resolution, Inc. | = \$ 6,750.00        |

All balances are due to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

Matthew R. Gould - Public Arbitrator, Presiding Chair  
Gregory W. Dawson - Public Arbitrator  
Leo J. Antosz - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Matthew R. Gould  
Matthew R. Gould  
Public Arbitrator, Presiding Chair

June 11, 2002  
Signature Date

/s/ Gregory W. Dawson  
Gregory W. Dawson  
Public Arbitrator

June 6, 2002  
Signature Date

/s/ Leo J. Antosz  
Leo J. Antosz  
Non-Public Arbitrator

June 3, 2002  
Signature Date

NASD Dispute Resolution, Inc.

Arbitration No. 01-00300

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Concurring Arbitrators:

  
Matthew R. Gould

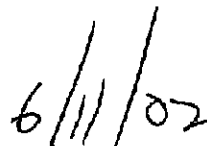
Public Arbitrator, Presiding Chair

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Gregory W. Dawson

Public Arbitrator

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Leo J. Antosz

Non-Public Arbitrator



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NASD Dispute Resolution, Inc.  
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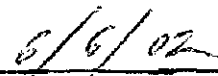
Concurring Arbitrators:

Matthew R. Gould  
Public Arbitrator, Presiding Chair

  
Gregory W. Dawson  
Public Arbitrator

Leo J. Antosz  
Non-Public Arbitrator

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Award Page 5 of 5

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Gregory W. Dawson  
Public Arbitrator

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Signature Date

  
\_\_\_\_\_  
Leo J. Antosz  
Non-Public Arbitrator

3 June 2002  
Signature Date