

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Carter Yohey, Claimant v. Morgan Stanley DW, Inc., Bradley P. Studebaker, Gary R. Elrod, and Robert D. Luce, Respondents

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Case Number: 02-04982

Hearing Site: Reno, Nevada

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Nature of Dispute: Customer v. Member and Associated Persons

**REPRESENTATION OF PARTIES**

For Claimant:

Thomas C. Bradley, Esq.  
Sinai Schroeder Mooney Boetsch Bradley  
Reno, Nevada

For Respondents:

Jonathan W. Fineman, Esq.  
Morgenstein & Jubelirer LLP  
San Francisco, California

**CASE INFORMATION**

Statement of Claim received on: August 22, 2002

Claimant's Uniform Submission Agreement signed: August 16, 2002

Joint Statement of Answer filed by Respondents: November 19, 2002

Respondent Morgan Stanley DW, Inc.'s Uniform Submission Agreement signed:  
November 19, 2002

Respondent Bradley P. Studebaker's Uniform Submission Agreement signed:  
November 19, 2002

Respondent Gary R. Elrod's Uniform Submission Agreement signed: November 19, 2002

Respondent Robert D. Luce's Uniform Submission Agreement signed: November 19, 2002

### **CASE SUMMARY**

Claimant's Statement of Claim alleged breach of contract, negligence, breach of fiduciary duty, unsuitability, misrepresentation, omission, fraud, failure to supervise, and violation of the rules and regulations of various exchanges, in the purchase and sale of unspecified variable annuity contracts.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and asserted affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested \$240,000.00 in compensatory damages, unspecified punitive damages, interest, and costs, including attorney's fees.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety. Respondents also requested expungement of all reference to the above-captioned arbitration from Respondents Bradley P. Studebaker's, Gary R. Elrod's, and Robert D. Luce's, registration records maintained by the NASD Central Registration Depository.

### **OTHER ISSUES CONSIDERED AND DECIDED**

On October 7, 2003, before Opening Statements, Respondents made a procedural motion that Michael Hume of Miller Research, a non-attorney seated at the Arbitration table as a consultant and adviser to Claimant's counsel, not be permitted to participate in presentation of Claimant's Opening Statement or to examine witnesses for the Claimant. After due deliberation, the Panel granted Respondents' motion in so far as examination of witnesses was concerned but in view of the immediacy of Opening Statements the Panel allowed Hume to participate.

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

- 1) The Panel finds that Respondent Bradley P. Studebaker failed to gather full and complete information about the Claimant's spending goals during the initial interview process; that this failure was due to his inexperience; and, that the failure could and should have been cured if he had been adequately supervised by Respondents Morgan Stanley DW, Inc. and Gary R. Elrod.
- 2) Respondents Morgan Stanley DW, Inc. and Gary R. Elrod are jointly and severally liable to and shall pay Claimant the sum of \$15,000.00 in compensatory damages for their failure to supervise the activity of Respondent Bradley P. Studebaker.
- 3) Upon hearing all the evidence presented, the Panel finds that Respondent Robert D. Luce is entirely innocent of any misconduct and that none of the allegations made against him were substantiated.
- 4) The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent Robert D. Luce's registration records maintained by the NASD Central Registration Depository, with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Robert D. Luce must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 5) Claimant's request for punitive damages is denied.
- 6) The parties shall bear their respective costs, including attorney's fees.
- 7) All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$ 300.00
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#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Morgan Stanley DW, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 2,750.00
<b>Total Member Fees</b>	<b>= \$ 5,200.00</b>

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

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

One (1) Pre-hearing conference session with the Panel @ \$1,125.00/session	= \$ 1,125.00
Pre-hearing conference: February 25, 2003 1 session	
Seven (7) Hearing sessions with the Panel @ \$ 1,125.00/session	= \$ 7,875.00
Hearings: October 7, 2003 2 sessions	
October 8, 2003 2 sessions	
October 9, 2003 3 sessions	
<b>Total Forum Fees</b>	<b>= \$ 9,000.00</b>

The Panel assessed the entire amount of the forum fees to Respondent Morgan Stanley DW, Inc.

**Fee Summary**

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
<u>Less payments</u>	= \$ (1,425.00)
<b>Refund Due Claimant</b>	<b>= \$ (1,125.00)</b>

2. Respondent Morgan Stanley DW, Inc. is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 9,000.00
Total Fees	= \$ 14,200.00
<u>Less payments</u>	= \$ (5,200.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 9,000.00</b>

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

ARBITRATION PANEL

<i>John C. Sihler, Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Sandra Smith Gangle, Esq.</i>	-	<i>Public Arbitrator</i>
<i>William J. Chambers</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

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JOHN C. SIHLER, ESQ.  
Chair, Public Arbitrator

\_\_\_\_\_  
Signature Date

  
\_\_\_\_\_  
SANDRA SMITH GANGLE, ESQ.  
Public Arbitrator

*Oct. 31, 2003*  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
WILLIAM J. CHAMBERS  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Date of Service

**ARBITRATION PANEL**

<i>John C. Sihler, Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Sandra Smith Gangle, Esq.</i>	-	<i>Public Arbitrator</i>
<i>William J. Chambers</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

  
JOHN C. SIHLER, ESQ.  
Chair, Public Arbitrator

10/31/03  
Signature Date

SANDRA SMITH GANGLE, ESQ.  
Public Arbitrator

Signature Date

WILLIAM J. CHAMBERS  
Non-Public Arbitrator

Signature Date

Date of Service

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<i>William J. Chambers</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

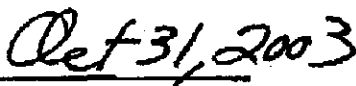
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Date of Service