

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

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In the Matter of the Arbitration Between:

Deborah Garvin, Claimant v. Morgan Stanley DW Inc., Respondent

Case Number: 02-05127

Hearing Site: Los Angeles, California

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Nature of the Dispute: Customer v. Member

**REPRESENTATION OF PARTIES**

For Claimant:

William F. Davis, Esq.  
Law Offices of William F. Davis  
Los Angeles, California

For Respondent:

Kevin Fitzgerald, Esq.  
William M. Turner, Esq.  
Jones Bell Abbott Fleming &  
Fitzgerald  
Los Angeles, California

**CASE INFORMATION**

Statement of Claim filed: August 29, 2002

Claimant's Uniform Submission Agreement signed: August 15, 2002

Statement of Answer filed: December 11, 2002

Respondent's Uniform Submission Agreement signed: December 16, 2002

**CASE SUMMARY**

Claimant alleged breach of contract, breach of fiduciary duty, unsuitability, unauthorized trading, negligence, violation of NASD and NYSE Rules, and failure to supervise. Claimant's allegations involved transactions in unspecified securities.

Respondent denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

**RELIEF REQUESTED**

Claimant requested \$484,000.00 in compensatory damages, unspecified punitive damages and costs, including attorney's fees.

Respondent requested dismissal of the Claimant's Statement of Claim in its entirety and costs, including attorney's fees.

**OTHER ISSUES CONSIDERED AND DECIDED**

On March 10, 2003, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On December 4, 2002, Respondent's counsel signed a Waiver Agreement on Respondent's behalf expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On March 17, 2004, Respondent made a motion to dismiss the Statement of Claim. After due deliberation, the Panel denied the motion.

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) Respondent is liable to and shall pay Claimant the sum of \$302,755.00 in compensatory damages.
- 2) Respondent is liable to and shall pay Claimant the sum of \$31,285.00 in pre-judgment interest.
- 3) The parties shall bear their respective costs, including attorney's fees.
- 4) 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 or the parties and the 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: May 13, 2003	1 session

Four (4) Hearing sessions @ \$1,125.00/session	= \$4,500.00
Hearings: March 16, 2004	2 sessions
March 17, 2004	2 sessions

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<b>Total Forum Fees</b>	<b>= \$5,625.00</b>
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The Panel assessed the entire balance of the forum fees, in the amount of \$5,625.00 to Respondent.

**Fee Summary**

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

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

2. Respondent is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	<u>= \$ 5,625.00</u>
Total Fees	= \$10,825.00
<u>Less payments</u>	<u>= \$(7,950.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 2,875.00</b>

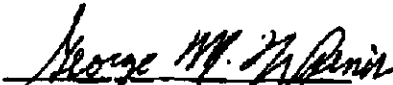
All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

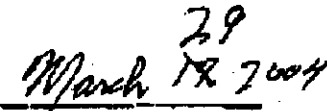
**ARBITRATION PANEL**

**George M. Weiner, Esq.**  
**Joseph C. Watson, Esq.**  
**Michael W. Burnett, CFA**

**Public Arbitrator, Presiding Chair**  
**Public Arbitrator**  
**Non-Public Arbitrator**

**Concurring Arbitrators' Signatures**

  
George M. Weiner, Esq.  
Chair, Public Arbitrator

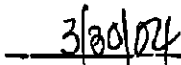
  
Signature Date

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Joseph C. Watson, Esq.  
Public Arbitrator

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Signature Date

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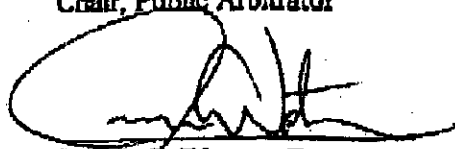
  
Date of Service

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Chair, Public Arbitrator



Joseph C. Watson, Esq.  
Public Arbitrator

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3/29/04

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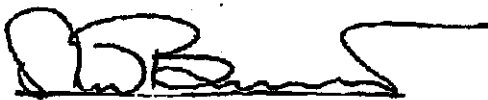
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03/29/2004  
Signature Date

3/30/04  
Date of Service