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A W A R D  
NASD Dispute Resolution

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In the Matter of the Arbitration Between:

Names of the Claimants

Peter W. Pagano, Trustee u/a/d 5/15/96  
Elizabeth Pagano

Case Number: 02-05524

Names of the Respondents

Morgan Stanley DW, Inc.  
Douglas Schrager

Hearing Site: Boca Raton, Florida

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Nature of the Dispute: Customer vs. Member and Associated Person.

**REPRESENTATION OF PARTIES**

For Peter W. Pagano, Trustee u/a/d 5/15/96 ("PWP") and Elizabeth Pagano ("EP"), hereinafter collectively referred to as "Claimants": Kenneth S. Sandler, Esq., Kenneth S. Sandler, P.A., Hollywood, Florida.

For Morgan Stanley DW, Inc. ("Morgan") and Douglas Schrager ("Schrager"), hereinafter collectively referred to as "Respondents": Tucker H. Byrd, Esq., Greenberg Traurig, P.A., Orlando, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: September 13, 2002.

Claimants signed the Uniform Submission Agreements: October 24, 2002.

Statement of Answer filed by Respondents on or about: December 19, 2002.

Motion for Leave to Amend the Statement of Claim (including amended pleading) filed by Claimants on or about: November 8, 2004.

Response to Amended Statement of Claim filed by Respondents on or about: December 16, 2004.

Respondent Morgan signed the Uniform Submission Agreement: July 14, 2002.

Respondent Schrager signed the Uniform Submission Agreement: January 4, 2005.

**CASE SUMMARY**

Claimants asserted the following causes of action against Respondents: breach of contract; breach of fiduciary duty; negligence; and unsuitability; Claimants further asserted the cause of action of lack of supervision against Respondent Morgan. The causes of action relate to the purchase in Claimants' accounts of various unspecified common stocks and high-tech mutual funds, as well as four Spectrum unit trusts containing limited partnerships.

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

### RELIEF REQUESTED

Claimants requested compensatory damages in the combined total amount of \$120,290.15, representing \$73,085.26 for Claimant PWP and \$47,204.89 for Claimant EP. Additionally, Claimants requested punitive damages, interest and costs.

Respondents requested that all claims asserted by Claimants be denied in their entirety and that Respondents be awarded their costs and fees incurred in defending this matter. Respondent Schrager further requested that the Panel enter an order directing the expungement of this matter from his NASD Central Registration Depository ("CRD") records.

### OTHER ISSUES CONSIDERED AND DECIDED

On or about December 1, 2004, the Panel issued an Order granting Claimants' Motion for Leave to Amend the Statement of Claim.

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:

The Panel finds in favor of Respondents. Accordingly, Claimants' claims are denied in their entirety.

Respondent Morgan is liable and shall reimburse Claimants the sum of \$300.00, representing the claim-filing fee paid by Claimants to NASD Dispute Resolution.

Any and all claims for relief not specifically addressed herein, including Claimants' request for punitive damages and Respondent Schrager's request for expungement, are denied.

### FEES

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

#### Filing Fees

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

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

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$2,750.00</u>
Total Member Fees	= \$5,200.00

**Adjournment Fees**

Adjournment fees were not assessed in this matter

**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.

Three-day cancellation fees were not assessed in this matter.

**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.

Injunctive relief fees were not assessed in this matter.

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A 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 with the Panel @ \$1,125.00/session	= \$1,125.00
Pre-hearing conference: April 16, 2003 1 session	
Four (4) Hearing sessions @ \$1,125.00/session	= \$4,500.00
Hearing Dates: January 3, 2005 2 sessions	
January 4, 2005 2 sessions	
<u>Total Forum Fees</u>	<u>= \$5,625.00</u>

The Panel has assessed the total forum fees of \$5,625.00 to Respondent Morgan.

**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 are 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 in this matter.

**Fee Summary**

Claimants are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 300.00
<u>Total Fees</u>	= \$ 300.00
<u>Less Payments</u>	= \$ 300.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Morgan is solely liable for:

<u>Member Fees</u>	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 5,625.00
<u>Total Fees</u>	= \$10,825.00
<u>Less Payments</u>	= \$ 3,550.00
Balance Due NASD Dispute Resolution	= \$ 7,275.00

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

**ARBITRATION PANEL**

Bonnie L. Roddenberry, Esq.	-	Public Arbitrator, Presiding Chairperson
S. Ronald Daniels	-	Public Arbitrator
John N. Breazeale	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/s/\_\_\_\_\_  
Bonnie L. Roddenberry, Esq.  
Public Arbitrator, Presiding Chairperson

January 5, 2005  
Signature Date

\_\_\_\_\_/s/\_\_\_\_\_  
S. Ronald Daniels  
Public Arbitrator

January 6, 2005  
Signature Date

\_\_\_\_\_/s/\_\_\_\_\_  
John N. Breazeale  
Non-Public Arbitrator

January 6, 2005  
Signature Date

January 7, 2005  
Date of Service (For NASD Dispute Resolution office use only)

JAN. 5, 2005

**NASD Dispute Resolution**

Arbitration No. 02-05524

**Award Page 4**

There were no administrative costs incurred in this matter.

**Fees Summary**

Claimants are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 300.00
<u>Total Fees</u>	= \$ 300.00
<u>Less Payments</u>	= \$ 300.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Respondent Morgan is solely liable for:

<u>Member Fees</u>	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 5,625.00
<u>Total Fees</u>	= \$10,825.00
<u>Less Payments</u>	= \$ 3,550.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 7,275.00

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

**ARBITRATION PANEL**

Bonnie L. Roddenberry, Esq.

S. Ronald Daniels

John N. Breazeale

Public Arbitrator, Presiding Chairperson

Public Arbitrator

Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Bonnie L. Roddenberry  
 Bonnie L. Roddenberry, Esq.  
 Public Arbitrator, Presiding Chairperson

January 5, 2005  
 Signature Date

\_\_\_\_\_  
 S. Ronald Daniels  
 Public Arbitrator

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

\_\_\_\_\_  
 John N. Breazeale  
 Non-Public Arbitrator

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

Date of Service (For NASD Dispute Resolution office use only)

Dispute Resolution  
 Form No. 02-0552a  
 01/01/05

There were no administrative costs incurred in this matter.

### Summary

Debtors are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Total Fees	= \$ 300.00
Less Payments	= \$ 300.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Debtors are jointly and severally liable for:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 3,625.00
Total Fees	= \$ 8,825.00
Less Payments	= \$ 1,550.00
Balance Due NASD Dispute Resolution	= \$ 7,275.00

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

### ARBITRATION PANEL

Michael L. Roddenberry, Esq.  
 Donald Daniels  
 (N. Breazeale)

Public Arbitrator, Presiding Chairperson  
 Public Arbitrator  
 Non-Public Arbitrator

### Arbitrators' Signatures

Michael L. Roddenberry, Esq.  
 Public Arbitrator, Presiding Chairperson

Signature Date

*Donald Daniels*

*1/6/2005*

Donald Daniels  
 Public Arbitrator

Signature Date

(N. Breazeale)  
 Non-Public Arbitrator

Signature Date

Office of Service (For NASD Dispute Resolution office use only)

JAN. 5. 2001 5:19PM

NASD Dispute Resolution

NASD Dispute Resolution

Arbitration No. 02-05524

Award Page 4

There were no administrative costs incurred in this matter.

### Fee Summary

Claimants are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 300.00
<u>Total Fees</u>	= \$ 300.00
<u>Less Payments</u>	= \$ 300.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Respondent Morgan is solely liable for:

<u>Member Fees</u>	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 5,625.00
<u>Total Fees</u>	= \$ 10,825.00
<u>Less Payments</u>	= \$ 3,550.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 7,275.00

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

### ARBITRATION PANEL

Bonnie L. Roddenberry, Esq.

S. Ronald Daniels

John N. Breazeale

Public Arbitrator, Presiding Chairperson

Public Arbitrator

Non-Public Arbitrator

### Concurring Arbitrators' Signatures

Bonnie L. Roddenberry, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

S. Ronald Daniels  
Public Arbitrator

Signature Date

John N. Breazeale  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

