

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

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In the Matter of the Arbitration Between:

Kenneth E. Palmer IRA, Sandra Palmer IRA, Kenneth E. Palmer Trust, Sandra Palmer Trust, and Mt. Auburn OB/Gyn Pension Plan f/b/o Kenneth Palmer (Claimants) v. Morgan Stanley DW, Inc., Thomas Carns, Peter Bouley, and Debra Brown (Respondents)

Case Number: 02-05806

Hearing Site: Cincinnati, Ohio

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Nature of the Dispute: Customers vs. Member and Associated Persons.

**REPRESENTATION OF PARTIES**

Claimants Kenneth E. Palmer IRA ("K. Palmer IRA"), Sandra Palmer IRA ("S. Palmer IRA"), Kenneth E. Palmer Trust ("K. Palmer Trust"), Sandra Palmer Trust ("S. Palmer Trust"), and Mt. Auburn OB/Gyn Pension Plan f/b/o Kenneth Palmer ("Mt. Auburn Pension Plan") hereinafter collectively referred to as "Claimants": Raymond H. Groble, III, Esq., Daley & Mohan, P.C., Chicago, IL.

Respondents Morgan Stanley DW, Inc. ("MSDW"), Thomas Carns ("Carns"), Peter Bouley ("Bouley"), and Debra Brown ("Brown") hereinafter collectively referred to as "Respondents": Pamela K. Ginsburg, Esq., Ulmer & Berne, LLP, Cincinnati, OH and Kenneth A. Bravo, Esq., Ulmer & Berne, LLP, Cleveland, OH.

**CASE INFORMATION**

Statement of Claim filed on or about: September 27, 2002.

K. Palmer IRA signed the Uniform Submission Agreement: September 17, 2002.

S. Palmer IRA signed the Uniform Submission Agreement: September 17, 2002.

K. Palmer Trust signed the Uniform Submission Agreement: October 8, 2002.

S. Palmer Trust signed the Uniform Submission Agreement: October 8, 2002.

Mt. Auburn Pension Plan signed the Uniform Submission Agreement: October 9, 2002.

Joint Statement of Answer filed by Respondents on or about: January 20, 2003.

MSDW signed the Uniform Submission Agreement: February 4, 2003.

Carns signed the Uniform Submission Agreement: February 6, 2003.

Bouley signed the Uniform Submission Agreement: February 4, 2003.

Brown signed the Uniform Submission Agreement: December 1, 2002.

### **CASE SUMMARY**

Claimants asserted the following causes of action: unsuitability; unauthorized trading; and breach of fiduciary duty. Claimants' claims involved: common stock; mutual funds; options; warrants/rights; and preferred stock.

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

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$3,000,000.00, plus interest, costs, attorneys' fees, witness and production fees, and other case-related costs.

Respondents requested that this case be dismissed in its entirety, that judgment be rendered in their favor and against Claimants and that they be awarded all costs incurred in defending this action, including reasonable attorneys' fees and forum fees.

### **OTHER ISSUES CONSIDERED AND 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.

The Panel dismissed the claims against Respondent Debra Brown on January 20, 2004 in response to her motion for summary disposition.

### **AWARD**

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

1. Claimants' claims are hereby dismissed in their entirety.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondents Thomas Carns' and Peter Bouley's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondents Thomas Carns and Peter Bouley must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.
3. Any and all relief not specifically addressed herein is denied.

### **FEES**

Pursuant to 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 = \$500.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Morgan Stanley DW, Inc. is a party.

Member surcharge = \$2,800.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$5,000.00

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

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

Two (2) Pre-hearing sessions with Panel @ \$1,200.00 = \$2,400.00

Pre-hearing conferences: June 5, 2003 1 session

January 20, 2004 1 session

Four (4) Hearing sessions @ \$1,200.00 = \$4,800.00

Hearing Dates: February 17, 2004 2 sessions

February 18, 2004 2 sessions

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Total Forum Fees = \$7,200.00

1. The Panel has assessed \$3,600.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$3,600.00 of the forum fees jointly and severally against Respondents.

### **Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee = \$ 500.00

Forum Fees = \$3,600.00

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Total Fees = \$4,100.00

Less payments = \$1,700.00

Balance Due NASD Dispute Resolution = \$2,400.00

2. MSDW is solely liable for:

<u>Member Fees</u>	= \$8,550.00
<u>Total Fees</u>	= \$8,550.00
<u>Less payments</u>	= \$8,550.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

3. Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$3,600.00
<u>Total Fees</u>	= \$3,600.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$3,600.00

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

Charles D. Underwood, Jr., Esq.	-	Public Arbitrator, Presiding Chair
Alex H. Keller	-	Public/Non-Public Arbitrator
John B. Glueckert	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

\_\_\_\_\_  
Charles D. Underwood, Jr., Esq.  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Alex H. Keller  
Public Arbitrator

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

  
\_\_\_\_\_  
John B. Glueckert  
Non-Public Arbitrator

3-16-04  
\_\_\_\_\_  
Signature Date

March 18, 2004

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

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Alex H. Keller	-	Public/Non-Public Arbitrator
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Signature Date

\_\_\_\_\_  
*Alex H. Keller*

Alex H. Keller  
Public Arbitrator

\_\_\_\_\_  
*3/12/04*  
Signature Date

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Charles D. Underwood, Jr., Esq.  
Public Arbitrator, Presiding Chairperson

3-18-04  
Signature Date

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