

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

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In the Matter of the Arbitration Between:

I. David Hong and Kim Hong, Claimants v. Morgan Stanley DW Inc. f/k/a Dean Witter Reynolds Inc. and Jeffrey A. Mullen, Respondents

Case Number: 02-05967

Hearing Site: Seattle, Washington

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Nature of the Dispute: Customers v. Member Firm and Associated Person

**REPRESENTATION OF PARTIES**

For Claimants:

Bradley S. Keller, Esq.  
Byrnes & Keller LLP  
Seattle, Washington

For Respondents:

Christopher B. Wells, Esq.  
Lane Powell Spears Lubersky LLP  
Seattle, Washington

**CASE INFORMATION**

Statement of Claim received: October 3, 2002

Claimants' Joint Uniform Submission Agreement signed: September 29, 2002

Joint Statement of Answer filed by Respondents Morgan Stanley DW Inc. f/k/a Dean Witter Reynolds Inc. and Jeffrey A. Mullen: December 19, 2002

Respondent Morgan Stanley DW Inc. f/k/a Dean Witter Reynolds Inc.'s Uniform Submission Agreement signed: November 20, 2002

Respondent Jeffrey A. Mullen's Uniform Submission Agreement signed: December 17, 2002

**CASE SUMMARY**

Claimants alleged that respondents engaged in conduct constituting negligence, breach of fiduciary duty, misrepresentation, breach of contract, violations of the Securities Act of Washington, RCW 21.20.010(1)-(3), the Federal Securities Exchange Act of 1934, Section 10(b), and violations of Washington's Consumer Protection Act, RCW 19.86 et seq. The allegations involve the purchase and sale of various unspecified securities.

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

**RELIEF REQUESTED**

Claimants' Statement of Claim requested compensatory damages in the amount of \$650,000.00, pre-judgment interest, and costs, including attorney's fees.

As summarized in closing argument at the arbitration hearing, Claimants requested an Award of \$407,000 on their negligence claims, \$17,828.11 on their Consumer Protection Act and breach of contract claims, and \$270,242.62 on their Washington Securities Act claims, inclusive of pre-Award interest, costs and attorney's fees.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety, an expungement order, and an order that claimants pay all forum fees and all costs, attorneys' fees and other expenses incurred by respondents to defend the claims.

**OTHER ISSUES CONSIDERED AND DECIDED**

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) **Certain Claims Allowed.**

- a. Respondents are jointly and severally liable to and shall pay Claimants the sum of \$205,775.00 in compensatory damages on Claimants' negligence claims.
- b. Respondents are jointly and severally liable to and shall pay Claimants the sum of \$13,328.11 on Claimants' Consumer Protection Act and breach of contract claims as follows:

i. Compensatory damages in the amount of	\$ 7,596.00
ii. Exemplary damages pursuant to Washington Consumer Protection Act	\$ 8,512.00
iii. Pre-Award interest	<u>\$ 2,038.70</u>
Sub Total	\$18,146.70
Minus Respondents' Payment at hearing	<u>\$ 4,818.59</u>
Total Due Claimants	\$13,328.11

- c. Respondents are jointly and severally liable to and shall pay Claimants the sum of \$4,500.00 in attorney's fees pursuant to the Washington Consumer Protection Act.

- 2) **Certain Claims Denied.** Claimants' claims against Respondents brought under the Washington Securities Act and the Federal Securities Exchange Act of 1934 are denied and are hereby dismissed with prejudice. Claimants are awarded \$0 on their statutory securities claims against Respondents.
- 3) This Award is in full and final satisfaction of all claims, defenses and issues submitted to this Arbitration. All other claims, causes of action and requests for relief asserted in this arbitration not specifically addressed above are denied and are hereby dismissed with prejudice.
- 4) Except as expressly provided herein, the parties shall bear their respective costs, including attorney's fees.

### 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 = \$ 375.00

#### 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. f/k/a Dean Witter Reynolds Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 2,250.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 4,000.00
<b>Total Member Fees</b>	<b>= \$ 7,000.00</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:

Two (2) Pre-hearing conference sessions with the Panel @ \$1,200.00/session =	\$ 2,400.00
Pre-hearing conferences:	
June 9, 2003	1 session
October 22, 2003	1 session

Nine (9) Hearing sessions @ \$1,200.00/session	= \$10,800.00
Hearings:	
January 5, 2004	1 session
January 6, 2004	2 sessions
January 7, 2004	2 sessions
January 19, 2004	2 sessions
January 22, 2004	2 sessions

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<b>Total Forum Fees</b>	<b>= \$ 13,200.00</b>
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1. The Panel waived the \$1,200.00 forum fee for the pre-hearing conference held on October 22, 2003.
2. The Panel assessed \$12,000.00 of the forum fees jointly and severally to Respondents Morgan Stanley DW Inc. f/k/a Dean Witter Reynolds Inc. and Jeffrey A. Mullen.

**Fee Summary**

1. Claimants, I. David Hong and Kim Hong are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 375.00
Less payments	= \$ (1,575.00)
<b>Refund Due Claimants</b>	<b>= \$ (1,200.00)</b>

2. Respondent, Morgan Stanley DW Inc. f/k/a Dean Witter Reynolds Inc., is charged with the following fees and costs:

Member Fees	= \$ 7,000.00
Less payments	= \$ (7,000.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

3. Respondents, Morgan Stanley DW Inc. f/k/a Dean Witter Reynolds Inc. and Jeffrey A. Mullen, are charged jointly and severally with the following fees and costs:

Forum Fees	= \$12,000.00
Less payments	= \$ (0.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 12,000.00</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.

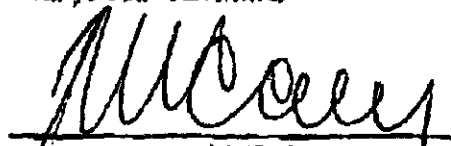
**ARBITRATION PANEL**

<i>Thomas J. Brewer</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>John M. Casey, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Diane Kelley Golbeck, Esq.</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

  
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THOMAS J. BREWER  
Chair, Public Arbitrator

Feb. 6, 2004  
Signature Date

  
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JOHN M. CASEY, ESQ.  
Public Arbitrator

2/6/2004  
Signature Date

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DIANE KELLEY GOLBECK ESQ  
Non-Public Arbitrator

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

2/9/04  
Date of Service

**ARBITRATION PANEL**

*Thomas J. Brewer*  
*John M. Casey, Esq.*  
*Diane Kelley Golbeck, Esq.*

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

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THOMAS J. BREWER  
Chair, Public Arbitrator

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Signature Date

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JOHN M. CASEY, ESQ.  
Public Arbitrator

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

*Diane K. Golbeck*  
\_\_\_\_\_  
DIANE KELLEY GOLBECK ESQ  
Non-Public Arbitrator

*February 9, 2004*  
\_\_\_\_\_  
Signature Date

*2/9/04*  
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Date of Service