

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

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In the Matter of the Arbitration Between:

Name of the Claimants

Case Number: 02-06549

Sam Betts;  
Charles Betts Legacy Trust;  
The Joshua Betts Legacy Trust; and,  
Betts Investment Company, LTD.

Name of the Respondents

Hearing Site: Dallas, Texas

Morgan Stanley DW Inc. and  
Mark Annon Johnson

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**NATURE OF THE DISPUTE**

Public Customers v. Member Firm and Associated Person

**REPRESENTATION OF PARTIES**

Claimants Sam Betts, Charles Betts Legacy Trust, The Joshua Betts Legacy Trust and Betts Investment Company, LTD., hereinafter collectively referred to as "Claimants": Robert L. Wright, Esq. and Steven J. Berry, Esq. of the firm of Wright & Berry LLP, located in Fort Worth, Texas.

Respondents Morgan Stanley DW Inc. ("MSDW") and Mark Annon Johnson ("Johnson"), hereinafter {collectively} referred to as "Respondents": Michael J. Stanley, Esq. of the firm of Beirne, Maynard & Parsons, L.L.P., located in Houston, Texas.

**CASE INFORMATION**

Statement of Claim filed: October 31, 2002.

Claimants signed the Uniform Submission Agreement: September 6, 2002.

Amended Statement of Claim filed: August 25, 2003.

Joint Statement of Answer filed by Respondents: January 27, 2003.

Respondent MSDW signed the Uniform Submission Agreement: December 3, 2002.

Respondent Johnson signed the Uniform Submission Agreement: June 20, 2003.

Answer and Affirmative Defenses to Amended Statement of Claim filed: September 9, 2003.

Respondents' Pre-hearing Brief filed on: February 18, 2004.

### **CASE SUMMARY**

Claimants asserted the following causes of action: unauthorized transactions; unsuitability; breach of fiduciary duty; violation of the state and federal securities laws; common law fraud; failure to supervise; negligence; breach of contract; violation of the Texas Deceptive Trade Practices Act; violation of the NASD and NTSE rules and the standards they establish; and, *respondeat superior*. These causes of action resulted from transactions involving common stocks and mutual funds, as well as the use of margin accounts.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Claimant has failed to state a claim upon which relief can be granted;
2. Claimant was fully advised and understood the nature of the securities purchased in his Morgan Stanley accounts and granted an informed consent with respect to each transaction in his accounts. Accordingly, Claimant is not entitled to any relief in this action;
3. The diminution in the value of the Claimant's investments made through Morgan Stanley was caused in whole or in part by market declines and economic conditions outside the control of Respondents;
4. Claimant approved, participated in and ratified the acts and transactions he complains about. Claimant is accordingly barred from any recovery in this action under the doctrines of waiver, estoppel and ratification;
5. Claimant's losses were proximately caused by his own decisions, conduct and/or negligence, not by any action or inaction on the part of Respondents. Claimant's claims are, therefore barred in whole or in proportion to the percentage of his negligence which contributed to his losses;
6. Claimant's claims are barred as a result of his failure to minimize or mitigate their damages;
7. Claimant's relationship with Morgan Stanley is of a contractual nature and, therefore, any tort claims for economic losses are barred as a matter of law;
8. Claimant's claims are barred in part by the applicable statutes of limitation;
9. The Claimant voluntarily assumed the risks of transactions at issue and the investment losses incurred;
10. Claimant's Morgan Stanley Client Agreements state that "*the law of the State of New York will apply in all respects*" in this arbitration. Nevertheless, Claimant's claims also fail under applicable Texas Authority.

### **RELIEF REQUESTED**

Claimant requested:

Compensatory Damages	\$ 700,000.00
Punitive Damages	Unspecified Amount
Interest	Unspecified Amount
Attorneys' Fees	Unspecified Amount
Other Costs	As Determined by Panel

Other Monetary/Non-Monetary Relief if any: As Determined by Panel

Respondents requested that the Claimant's action be denied and dismissed.

**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, 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. The Claims asserted by Claimants Sam Betts, Charles Betts Legacy Trust, The Joshua Betts Legacy Trust and Betts Investment Company, LTD. are dismissed and denied in their entirety;
2. The parties shall bear their own costs of arbitration, including any attorneys' fees, except for those sums specifically enumerated herein;
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Mark Annon Johnson'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, Respondent Johnson must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
4. Any and all relief not specifically addressed herein, including punitive damages, 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	= \$ 375.00
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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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Morgan Stanley DW Inc. is a party and the following member fees are assessed:

Member surcharge	= \$ 2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 4,000.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed: None

**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 a single arbitrator @ \$450.00 = \$ 450.00  
Pre-hearing conference: February 19, 2004 1 session

One (1) Pre-hearing session with Panel @ \$1,200.00 = \$ 1,200.00  
Pre-hearing conference: August 5, 2003 1 session

Eleven (11) Hearing sessions @ \$1,200.00 = \$13,200.00  
Hearing Date(s): March 9, 2004 2 sessions  
March 10, 2004 2 sessions  
March 11, 2004 2 sessions  
March 12, 2004 1 session  
May 5, 2004 2 sessions  
May 6, 2004 2 sessions

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Total Forum Fees = \$14,850.00

The Panel has assessed \$14,850.00 of the forum fees to Respondent Morgan Stanley DW Inc.

**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 not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

Copies of audio tapes for Claimants = \$ 180.00

**EEE SUMMARY**

Claimants Sam Betts, Charles Betts Legacy Trust, The Joshua Betts Legacy Trust and Betts Investment Company, LTD. are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
<u>Administrative Costs (Audio Tapes)</u>	<u>= \$ 180.00</u>
Total Fees	= \$ 555.00
<u>Less payments</u>	<u>= \$ 1,980.00</u>
Refund Due from NASD Dispute Resolution	= \$ 1,425.00

Respondent Morgan Stanley DW Inc. is solely liable for:

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Member Fees	= \$ 7,000.00
Forum Fees	= \$14,850.00
Total Fees	= \$21,850.00
Less payments	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$14,850.00

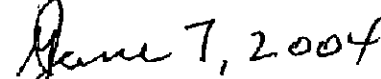
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Bill H. Brister - Public Arbitrator, Presiding Chairperson  
Edward Arthur Horton - Public Arbitrator  
William Richard Smith - Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Bill H. Brister  
Public Arbitrator, Presiding Chairperson

  
Signature Date

\_\_\_\_\_  
Edward Arthur Horton  
Public Arbitrator

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

\_\_\_\_\_  
William Richard Smith  
Non-Public Arbitrator

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

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

Member Fees	= \$ 7,000.00
Forum Fees	= \$14,850.00
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Less payments	= \$ 7,000.00
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Bill H. Brister  
Public Arbitrator, Presiding Chairperson

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

Edward Arthur Horton  
Edward Arthur Horton  
Public Arbitrator

6-8-2004  
Signature Date

\_\_\_\_\_  
William Richard Smith  
Non-Public Arbitrator

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

6/9/04 Wu  
Date of Service (For NASD Dispute Resolution office use only)

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Forum Fees	= \$14,850.00
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Public Arbitrator, Presiding Chairperson

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Signature Date

\_\_\_\_\_  
Edward Arthur Horton  
Public Arbitrator

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

William Richard Smith

William Richard Smith  
Non-Public Arbitrator

May 28, 2004  
Signature Date

6/9/04 EHM

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