

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

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In the Matter of the Arbitration Between:

Myra Rattner (Claimant) v. Morgan Stanley DW, Inc. and Andrew Nygren (Respondents)

Case Number: 02-06733

Hearing Site: New York, New York

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

**REPRESENTATION OF PARTIES**

Claimant Myra Rattner ("Rattner") hereinafter referred to as "Claimant": Lawrence M. Gottlieb, Esq., Hass & Gottlieb, Scarsdale, NY.

Respondents Morgan Stanley DW, Inc. ("MSDW") and Andrew Nygren ("Nygren") hereinafter collectively referred to as "Respondents": Howard M. Sendrovitz, Esq., Morgan Stanley DW, Inc., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: November 4, 2002.

Claimant signed the Uniform Submission Agreement: December 7, 2002.

Joint Statement of Answer filed by Respondents on or about: January 23, 2003.

MSDW did not sign the Uniform Submission Agreement.

Nygren did not sign the Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: omission of fact; suitability; and misrepresentation. Claimant's claim involved unspecified common stock; municipal bonds; and corporate bonds.

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

**- RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$90,888.00, together with interest, costs and reasonable attorneys' fees, and punitive damages in a sum to be determined, but not less than \$250,000.00. Claimant is further seeking restoration of ownership of JC Penney & Co., Inc. non-callable corporate bond issued August 19, 1996

with yield to maturity of 7.625%.

Respondents requested that the Panel dismiss the Statement of Claim in its entirety; award Respondents the costs and expenses of this arbitration; issue an Order expunging this matter from the CRD records and Form U-4 of Respondent Nygren; and award Respondents such other and further relief as is just and proper.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondents did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and, having answered the claim, and appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

During the initial pre-hearing conference conducted on May 28, 2003, the parties agreed to Thomas W. Smith, Esq., the non-public arbitrator serving as the chairperson.

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.

### **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. Claimant's claims are dismissed in their entirety.
2. The arbitrators note the following:

"Despite the dismissal, the arbitrators take note that it was undisputed that the Claimant authorized and encouraged a third party to place all orders to buy and sell securities in her account during the entire time her account was at Morgan Stanley Dean Witter, Inc. ("MSDW"). Respondent Nygren accepted all orders to buy and sell securities from this third party without written authorization, in violation of the written policy of MSDW."

3. Respondents are liable for and shall pay to NASD Dispute Resolution the \$300.00 non-refundable filing fee.
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 = \$300.00

#### **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 person at the time of the events giving rise to the dispute. Accordingly, Morgan Stanley DW, Inc. is a party.

Member surcharge = \$1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$2,750.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

September 9, 10, and 11, 2003, adjournment by Claimant

*Respondents are jointly and severally liable for the adjournment fee = \$1,125.00*

#### **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:

One (1) Pre-hearing session with Panel @ \$1,125.00 = \$1,125.00

Pre-hearing conference: May 28, 2003 1 session

Two (2) Hearing sessions @ \$1,125.00 = \$2,250.00

Hearing Date: December 16, 2003 2 sessions

Total Forum Fees = \$3,375.00

1. The Panel has assessed \$3,375.00 of the forum fees jointly and severally against Respondents.

#### **Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee = \$ 0.00

Total Fees = \$ 0.00

Less payments = \$1,425.00

Refund Due = \$1,425.00

*The Panel has determined to refund the \$300.00 filing fee to the Claimant. Respondents are jointly and severally liable to remit to NASD Dispute Resolution \$300.00 for the filing fee.*

2. MSDW is solely liable for:

<u>Member Fees</u>	= \$5,200.00
<u>Total Fees</u>	= \$5,200.00
<u>Less payments</u>	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally liable for:

Filing Fee	= \$ 300.00
Adjournment Fee	= \$1,125.00
<u>Forum Fees</u>	= \$3,375.00
<u>Total Fees</u>	= \$4,800.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$4,800.00

*The Panel has determined to refund the \$300.00 filing fee to the Claimant. Respondents are jointly and severally liable to remit to NASD Dispute Resolution \$300.00 for the filing fee.*

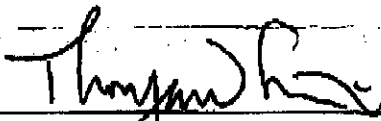
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.
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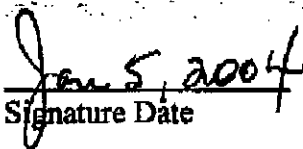
**ARBITRATION PANEL**

Thomas W. Smith, Esq.	-	Non-Public Arbitrator, Presiding Chair
Nancy Plessner Wendell	-	Public Arbitrator
Peter C. Dinos	-	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.

  
\_\_\_\_\_  
Thomas W. Smith, Esq.  
Non-Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Nancy Plessner Wendell  
Public Arbitrator

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

\_\_\_\_\_  
Peter C. Dinos  
  
Public Arbitrator

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

January 5, 2004  
Date of Service (For NASD Dispute Resolution use only)

NASD Dispute Resolution  
Arbitration No. 02-06733  
Award Page 5 of 5

ARBITRATION PANEL

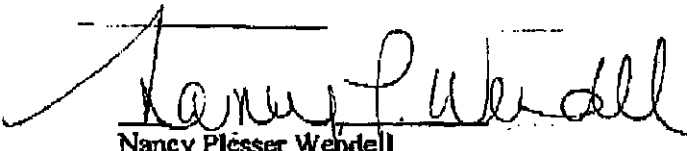
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Signature Date

\_\_\_\_\_  
Nancy Plessner Wendell  
Public Arbitrator

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

Peter C. Dinos  
Peter C. Dinos

Public Arbitrator

Jan. 2, 2004  
Signature Date

\_\_\_\_\_  
January 5, 2004  
Date of Service (For NASD Dispute Resolution use only)