

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Names of Claimants

Martha Zilbermann and Margaret Apple

and

Case Number: 02-06804  
Hearing Site: Houston, Texas

Name of Respondent

Morgan Stanley DW, Inc.

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**NATURE OF DISPUTE**

Customers v. Member Firm

**REPRESENTATION OF PARTIES**

Martha Zilbermann and Margaret Apple ("**Claimants**") were represented by Christopher J. Bebel, Esq., of Sacks, Bebel and Boll, in Houston, Texas.

Morgan Stanley DW, Inc. ("**MSDW**") was represented by Anne T. Cooney, Esq., of Morgan Stanley, in San Francisco, California.

**CASE INFORMATION**

The Statement of Claim was filed on or about November 11, 2002.

The Submission Agreements of Claimants, Martha Zilbermann and Margaret Apple, were signed on or about October 6, 2002.

Statement of Answer was filed by Respondent, Morgan Stanley DW, Inc., on or about March 26, 2003.

The Submission Agreement of Respondent, Morgan Stanley DW, Inc., was signed on or about May 23, 2003.

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of contract, breach of fiduciary

duty, failure to supervise, negligence, and misrepresentation. The causes of action related to the recommendation and purchase of unspecified securities. Claimants alleged that Respondent intentionally and/or negligently misrepresented material facts, which Claimants relied upon causing them damages. Claimants also alleged that Respondent was unjustly enriched by its receipt of profits, commissions, mark-ups, mark-downs, fees and/or spreads.

Unless specifically admitted in its Answer, Respondent, Morgan Stanley DW, Inc., denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: failure to state a claim; waiver; contributory negligence; assumption of risk; ratification; lack of due diligence; severe economic and market declines; failure to mitigate and unclean hands.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of:

Actual/Compensatory	\$1,000,000
Punitive/Exemplary	Unspecified
Interest	Unspecified
Attorney's Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondent requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

The panel finds that the evidence demonstrated a failure by the broker to have sufficient and/or adequate procedures to properly and/or accurately document, record and/or verify information necessary and required to make a proper determination as to whether the investments were suitable for these claimants in light of their age and status, and whether suitable investments for these claimants were recommended. Further, the panel finds that Morgan Stanley failed to prove it had proper and sufficient supervisory procedures to ensure the accounts that they are the subject of this arbitration were properly supervised.

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

### **AWARD**

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

- 1.) Respondent, Morgan Stanley DW, Inc., is liable for and shall pay to Claimants, Martha Zilbermann and Margaret Apple, the sum of \$60,000 in compensatory damages;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 3.) Any relief not specifically enumerated, including punitive damages and attorney fees, is hereby denied with prejudice.

### **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

#### **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. In this matter, the member firm is Morgan Stanley DW, Inc.

Member surcharge = \$2250.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$4000.00

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

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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 a single arbitrator x \$450.00	= \$ 900.00
Pre-hearing conferences: January 27, 2004	1 session
February 17, 2004	1 session
One (1) Pre-hearing session with Panel x \$1200.00	= \$ 1,200.00
Pre-hearing conference: June 17, 2003	1 session
Ten (10) Hearing sessions x \$1200.00	= \$12,000.00
Hearing Dates: February 18, 2004	2 sessions
February 19, 2004	2 sessions
February 20, 2004	2 sessions
May 3, 2004	2 sessions
May 4, 2004	2 sessions
Total Forum Fees	= \$ 14,100.00

The Arbitration Panel has assessed \$7,050.00 of the forum fees jointly and severally to Martha Zilbermann and Margaret Apple.

The Arbitration Panel has assessed \$7,050.00 of the forum fees to Morgan Stanley DW, Inc.

#### **FEE SUMMARY**

Claimants, Martha Zilbermann and Margaret Apple, are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 7,050.00
Total Fees	= \$ 7,425.00
Less payments	= \$ 1,575.00
Balance Due NASD Dispute Resolution	= \$ 5,850.00

Respondent, Morgan Stanley DW, Inc., is liable for:

Member Fees	= \$ 7,000.00
Forum Fees	= \$ 7,050.00
Total Fees	= \$14,050.00
Less payments	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$ 7,050.00

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

**ARBITRATION PANEL**

Sharon Jevort Hemphill, Esq. - Public Arbitrator, Presiding Chair  
James A. Parker - Public Arbitrator  
James R. Augustine - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Sharon Jevort Hemphill, Esq.  
Sharon Jevort Hemphill, Esq.  
Public Arbitrator, Presiding Chair

May 25, 2004  
Signature Date

/s/ James A/ Parker  
James A. Parker  
Public Arbitrator

May 26, 2004  
Signature Date

/s/ James R. Augustine  
James R. Augustine  
Non-Public Arbitrator


May 25, 2004  
Signature Date

May 26, 2004  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

Sharon Jevett Hemphill, Esq. - Public Arbitrator, Presiding Chair  
James A. Parker - Public Arbitrator  
James R. Augustine - Non-Public Arbitrator

**Concurring Arbitrators:**

  
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Sharon Jevett Hemphill, Esq.  
Public Arbitrator, Presiding Chair

5-25-08  
\_\_\_\_\_  
Signature Date

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James A. Parker  
Public Arbitrator

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

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James R. Augustine  
Non-Public Arbitrator

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**Concurring Arbitrators:**

Sharon Jevent Hemphill, Esq.  
Public Arbitrator, Presiding Chair

James A. Parker  
James A. Parker  
Public Arbitrator

Signature Date

5/26/04

Signature Date

James R. Augustine  
Non-Public Arbitrator

Signature Date

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Public Arbitrator

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Signature Date

  
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James R. Augustine  
Non-Public Arbitrator

5/25/2004  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Date of Service (For NASD office use only)