

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimants

Anthony A. Pachelli and  
Louise B. Pachelli

Case Number: 02-07151

Name of the Respondents

Morgan Stanley DW, Inc. and  
William Batie

Hearing Site: Albuquerque, New Mexico

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**NATURE OF DISPUTE**

Customers vs. Member Firm and Associated Person

**REPRESENTATION OF PARTIES**

Thomas J. Schuchert, Esq. with law offices located in Albuquerque, New Mexico and Jackson, New Jersey, represented Claimants, Anthony A. Pachelli and Louise B. Pachelli ("Pachelli"), hereinafter referred to as "Claimants."

Kenneth C. Mennemeier, Esq. of the law firm Mennemeier, Glassman & Stroud, located in Sacramento, California, represented the Respondents, Morgan Stanley DW, Inc. ("Morgan Stanley") and William Batie ("Batie"), hereinafter collectively referred to as "Respondents."

**CASE INFORMATION**

Statement of Claim filed on or about November 25, 2002. Claimants Pachelli jointly signed the Uniform Submission Agreement on November 13, 2002.

Statement of Answer jointly filed by Respondents Morgan Stanley and Batie on June 23, 2003. Respondent Morgan Stanley signed the Uniform Submission Agreement on April 15, 2003, and Respondent Batie signed the Uniform Submission Agreement on April 16, 2003.

Respondents Morgan Stanley and Batie filed a Motion to Compel on September 24, 2004. Claimant did not file a response to Respondents' Motion.

Respondents filed a Motion to Dismiss on December 16, 2004 for Claimants' failure to comply with the Panel's Discovery Order of November 16, 2004. Claimant did not file a written response.

In a letter dated January 18, 2005, Respondents further requested for dismissal of this matter for Claimants' failure to comply with the Panel's Discovery Orders. Claimants did not file a written response.

### **CASE SUMMARY**

Claimant asserted the following causes of action: suitability, churning and misrepresentations. The causes of action relate to an unspecified Margin Account and Options. Claimants asserted that these were unsuitable to their investment needs and objectives.

Unless specifically admitted in their Answer, Respondents Morgan Stanley and Batie denied the allegations made in the Statement of Claim and asserted the following defenses: assumption of risk; estoppel; comparative negligence; failure to mitigate damages; statute of limitations and doctrine of laches.

### **RELIEF REQUESTED**

Claimants requested \$400,000.00 in compensatory damages; \$800,000 in treble damages; and cost and attorney's fees.

Respondents requested dismissal of the Statement of Claim in its entirety with prejudice, expungement of any reference of this arbitration from the CRD record of Respondent Batie, for cost and all forum fees to be assessed to the Claimants.

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

Pursuant to Respondents' Motion to Compel filed September 24, 2004, the Chairman on behalf of the Panel made the following ruling in an Order dated November 16, 2004:

During the pre-hearing scheduling conference of March 25, 2004, all parties were ordered to produce all requested documents and information (or to serve objections thereto) no later than September 1, 2004. Respondents have now filed a Motion to Compel stating that as of September 24, 2004, the Claimants have neither produced the requested documents and information, nor served objections thereto. The Motion to Compel was served on Claimants who, under the Panel's Scheduling Order, had until October 15, 2004 to serve a response thereto. No such response was served by said date.

Accordingly, Claimants are hereby ordered to comply fully with Respondents' First Request for Production of Documents and Information dated July 8, 2003 in the manner set forth in the NASD Discovery Guide. The documents and information so requested shall be produced no later than December 13, 2004. Since objections to such production were not served by the date permitted, no objections will now be entertained. Full and complete production is required.

Claimants may be subject to sanctions if the production hereby ordered is refused or delayed.

Pursuant to Respondents' motion to dismiss dated December 16, 2004, the Panel made the following findings in an Order dated January 7, 2005:

1. Claimants have failed to produce the documents required by Respondents' First Request for Production of Documents and Information dated July 8,

- 2003, the Panel's Scheduling Order dated March 25, 2004 and the Panel's Order dated November 16, 2004 and such failure continues to this date;
2. Since the Claimants have provided no information or argument to indicate to the Panel that there is any substantial justification for such failure, it appears to the Panel that such failure is willful and intentional;
  3. Claimants' failure to comply as aforesaid has caused Respondents to incur extraordinary costs; and
  4. Even if the ordered production is made forthwith, it is likely that, in fairness to the parties, the Panel will have to postpone the hearing on the merits presently scheduled to commence on February 1, 2005.

The Arbitrators entered the following Order:

The Claimants shall pay a sanction in the amount of \$400.00 for their repeated and continuing failures as above. Said sanction shall be paid jointly to the Respondents and shall be delivered to the office of their counsel of record no later than the close of business on January 17, 2005; and

The Claimants shall comply fully with the aforesaid Production Order by delivering the required documents and information to Respondents' Counsel no later than the close of business on January 17, 2005.

Respondents' Motion to Dismiss is held in abeyance. However, the Arbitrators advise all parties that it is their present intention to dismiss this matter without further delay if the Claimants fail to bring themselves to full compliance with the Orders as set forth herein.

Pursuant to Respondents Morgan Stanley and Batie's further request to dismiss this matter on January 18, 2005 for Claimants' failure to comply with the Panel's Discovery Orders, the Panel deliberated on February 1, 2005 and made the following ruling in an Order, which was served on the parties on February 8, 2005:

This matter came on for deliberation by the Panel of Arbitrators on Respondents' Motion to Dismiss dated December 16, 2004 and subsequent written communications received from counsel for both parties.

The Panel makes the following findings:

Claimants have failed to produce the discovery repeatedly ordered by the Panel and has failed to pay the sanction previously ordered;

Claimants have refused to participate in the hearing previously scheduled with their concurrence and have failed to request a postponement;

By naming William Batie as an individual Respondent, Claimants have caused a potentially prejudicial entry to be made in Mr. Batie's CRD. By refusing to produce discovery and by refusing to participate in the hearing, Claimants have deprived Mr. Batie of any opportunity to confront evidence of his alleged wrongdoing and any opportunity to present evidence that might exonerate him.

Therefore, the Panel makes the following orders:

All references to this case shall be expunged from Mr. Batie's CRD;

The sanction previously ordered by the Panel remains in effect and shall be paid by the Claimants;

All forum fees in this case shall be charged to and paid by the Claimants; and

This case shall be dismissed without prejudice.

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 by the parties the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Any and all claims asserted by Claimants, Anthony A. Pachelli and Louise B. Pachelli, are dismissed without prejudice;
2. Claimants, Anthony A. Pachelli and Louise B. Pachelli, are jointly liable for and shall pay to Respondents, Morgan Stanley DW, Inc. and William Batie, the amount of \$400.00 as sanctions for their failure to produce documents and information pursuant to NASD Discovery Guidelines and as ordered by the Panel on November 16, 2004;
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent William Batie'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 Batie must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
4. Except as otherwise specified herein, parties shall bear their own costs, including attorneys' fees; and
5. Any and all relief not specifically addressed herein, including punitive damages, is dismissed without 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 = \$ 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 person at the time of the event(s) 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

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

February 1-3, 2005 adjournment	= \$1,200.00
(waived by Panel)	

**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 @ \$1,200.00	= \$1,200.00
Pre-hearing conference: March 25, 2005 1 session	
Total Forum Fees	= \$1,200.00

The Panel assessed 100% of the total forum fees in the amount of \$1,200.00 jointly to Claimants, Anthony A. Pachelli and Louise B. Pachelli.

**SEE SUMMARY**

1. Claimants, Anthony A. Pachelli and Louise B. Pachelli, are jointly liable for:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$1,200.00
Total Fees	= \$1,700.00
Less payments	= \$1,700.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

Member Fees	= \$8,550.00
Less payments	= \$8,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

**ARBITRATION PANEL**

James D. Knotter, Esq.	-	Public Arbitrator, Presiding Chairperson
Donald W. Hurst	-	Public Arbitrator
Jack G. Till	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/ James D. Knotter, Esq.  
James D. Knotter, Esq.  
Public Arbitrator, Presiding Chairperson

3/23/05  
Signature Date

/s/ Donald W. Hurst  
Donald W. Hurst  
Public Arbitrator

3/23/05  
Signature Date

/s/ Jack G. Till  
Jack G. Till  
Non-Public Arbitrator

3/23/05  
Signature Date

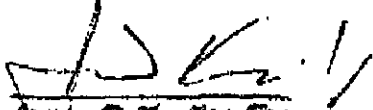
3/23/05  
Date of Service (For NASD Dispute Resolution office use only)

ARBITRATION PANEL

James D. Knottier, Esq.  
Donald W. Hurst  
Jack G. Till

- Public Arbitrator, Presiding Chairperson  
- Public Arbitrator  
- Non-Public Arbitrator

Concurring Arbitrators' Signatures



James D. Knottier, Esq.  
Public Arbitrator, Presiding Chairperson

3/23/05  
Signature Date

Donald W. Hurst  
Public Arbitrator

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

Jack G. Till  
Non-Public Arbitrator

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NASD Dispute Resolution

Arbitration No. 02-07161

Award Page 8 of 9

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James D. Knotter, Esq.

Donald W. Hurst

Jack D. Till

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator
- Non-Public Arbitrator

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James D. Knotter, Esq.

Public Arbitrator, Presiding Chairperson

\_\_\_\_\_  
Signature DateDonald W. Hurst  
Public ArbitratorMarch 23, 2005  
Signature Date\_\_\_\_\_  
Jack D. Till

Non-Public Arbitrator

\_\_\_\_\_  
Signature Date\_\_\_\_\_  
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**ARBITRATION PANEL**

James D. Knotter, Esq.

Donald W. Hurst

(G) — Jack B. Till

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator
- Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

James D. Knotter, Esq.

Public Arbitrator, Presiding Chairperson

Signature Date

Donald W. Hurst

Public Arbitrator

Signature Date

  
Jack B. Till

Non-Public Arbitrator

MAR 23, 2005  
Signature Date

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