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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Esther Farnsworth

Case Number: 02-07298

Name of the Respondent  
Morgan Stanley DW, Inc.

Hearing Site: Tampa, Florida

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

For Esther Farnsworth ("Farnsworth"), hereinafter referred to as "Claimant": James D. Keeney, Esq., James D. Keeney, P.A., Sarasota, Florida.

For Morgan Stanley DW, Inc. ("MSDW"), hereinafter referred to as "Respondent": Brad Kaufman, Esq., Joseph C. Coates, III, Esq., and Neil B. Solomon, Esq., Greenberg Traurig, P.A., West Palm Beach, Florida; and Lisa B. Dodge, Esq., Vice President, MSDW Law Division, Sarasota, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: November 26, 2002.

Claimant signed the Uniform Submission Agreement: November 26, 2002.

Statement of Answer filed by Respondent on or about: February 12, 2003.

Respondent signed the Uniform Submission Agreement: February 20, 2003.

Motion for Award of Sanctions filed by Claimant on or about: September 15, 2003.

Response to Claimant's Motion for Sanctions filed by Respondent on or about: September 26, 2003.

Motion to Quash Subpoena directed to NASD filed by Respondent on or about: October 21, 2003.

Response to Respondent's Motion to Quash Subpoena filed by Claimant on or about: November 4, 2003.

Motion to Supplement the Record and for Award of Additional Sanctions filed by Claimant on or about: November 18, 2003.

Response to Claimant's Motion to Supplement the Record filed by Respondent on or about: December 8, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: unauthorized sales and purchases of securities in Claimant's account in violation of Sections 517.301 and 517.211 of the Florida Statutes; common law gross negligence or, at a minimum, ordinary negligence; unsuitability; violations of NYSE Rule 405 and NASD Rule 2310; breach of fiduciary duty; failure to properly supervise; violation of Rule 3010 of the NASD Conduct Rules of Fair Practice; and *respondeat superior*. The causes of action relate to the sale from Claimant's IRA account at Respondent of corporate bonds, high-yield income funds, and equity mutual funds, and the purchase and

maintenance thereafter of an assortment of "B" shares in proprietary MSDW mutual funds and other funds with high back-end loads.

Unless specifically admitted in its Answer, Respondent denied all the allegations made in the Statement of Claim and asserted various defenses, including: failure to state a claim upon which relief could be granted; suitability; fully advised of the risks; knowledgeable decision-making; waiver; estoppel; ratification and approval; no misrepresentations nor omissions; no fraud; Claimant's negligence; failure to mitigate; good faith and reasonable diligence; Claimant-caused losses; economic-loss-doctrine bar; *in pari delicto*; extraordinary market conditions and events outside Respondent's control; reasonable and adequate supervision by Respondent; statutes-of-limitations; and ineligibility for Arbitration pursuant to NASD Code Section 10304.

Respondent did not waive the right to seek its fees and expenses pursuant to Florida Statute Section 517.

### RELIEF REQUESTED

Claimant requested the following:

1. statutory rescission damages, exclusive of legal interest, in an amended-at-Hearing amount of \$166,214.32 + \$7,069.26 costs for selling the "B" shares, or such other amount to be determined based on discovery and the proof of specific damages presented before the Panel;
2. disgorgement of all commissions, charges, fees, and expenses paid, plus legal interest, such amount to be determined based on discovery and the proof of specific damages presented before the Panel;
3. reimbursement of all commissions, fees, taxes, and penalties paid or owing to other entities in order to undo the damage done to Claimant's account by Respondent, plus legal interest, such amount to be determined based on discovery and the proof of specific damages presented before the Panel;
4. other compensatory damages in excess of \$15,000.00, plus interest thereon at the legal rate;
5. all of Claimant's costs, expenses, and disbursements in pursuing this Arbitration proceeding;
6. full reimbursement of all filing and forum fees;
7. reasonable attorney's fees, with such amount to be determined by a court of competent jurisdiction in a confirmation-proceeding following rendition of the Award by the Panel in this matter, pursuant to the Florida Arbitration Code, F.S. Section 682.01 *et seq.*, and as mandated by the decisions of the Supreme Court of Florida and Florida's lower appellate courts; and
8. such other and further relief, including but not limited to punitive damages, as the Panel deems just and proper.

Respondent requested that all claims asserted by Claimant be denied in their entirety and that Respondent be awarded the costs and fees incurred in defending this matter.

### **PARTIES' AGREEMENT**

The Parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

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

1. Due to relevancy, redundancy of material facts, and so forth, pre-Hearing, the Panel GRANTED Respondent's Motion to Quash Claimant's Subpoena to NASD.
2. Due to relevancy, its being a settlement agreement, and so forth, at the Hearing, the Panel GRANTED Respondent's Motion to Exclude Claimant's proffered Exhibit 23(b).
3. Post-Hearing, the Panel DENIED Claimant's Motion to Supplement the Record with alleged newly-discovered evidence/proffered Exhibits; such DENIAL is due to relevancy, including one of such documents' being similar in nature to the settlement-agreement previously excluded, and so forth. (As the foregoing reflects, due to other, prior-scheduled matters' settling, postponing, etc., each Panelist had time to read, and did read, Respondent's Response to Claimant's Motion. For example, one Panel-Member had a 3-day Hearing in another Arbitration scheduled for Dec. 15-17, 2003 to unexpectedly settle, whereby such 3-days, and all related pre-Hearing preparation-time therefor, became available. As there was some confusion about the necessity of Respondent's timely filing its Response, timely seeking an extension, and so forth, and as each Panel-Member had time available, after discharging other previously scheduled matters, the Panel believed it prudent to accept and review such filing. Respondent shall be, and the same hereby is, AGAIN ADVISED and CAUTIONED about the need for timely performance.

Also, post-Hearing, after review and deliberation, the Panel GRANTED Respondent's Motion concerning the applicable 2-year statute of limitations barring some of Claimant's statutory causes of action, i.e., those statutory claims with 2-year limitation-periods barring action(s) and inaction(s) occurring 2-years before November 26, 2002, the date Claimant filed her Statement of Claim.

### **FACTUAL AND LEGAL DETERMINATIONS**

Claimant is a retired widow. Claimant was 76 years-old when she first became a client of Mr. Bruce Baird's, a Registered Representative and employee of Respondent's (sometimes "RR" or "Mr. Baird"). Claimant had a 20 year-old adopted child then-living with her at home; Claimant financially supported this child. Claimant further had home-mortgage obligations of \$803 a month.

Claimant was dependent on the IRA account-in-question to help meet her family's and her monthly living expenses and withdrew monthly approximately \$2,000. Such IRA account was initially opened 15 years ago at one of Respondent's Offices in another State. At that time, the account was somewhat diversified, but mostly in higher-grade corporate bonds/fixed-income assets, with also some higher-grade growth stocks. Formerly, bonds were purchased when "old" bonds matured, and no (0) bond(s) was/were traded prior to maturity. It was, by and large, a fairly conservative, income-producing account, all in keeping with Claimant's long-standing investment objective of income.

In September 2000, Claimant suffered congestive heart failure, along with this kidney failure; she almost died. She then decided a local Florida (versus an out-of-State) broker was needed. Claimant attended an investment seminar of Mr. Baird's; since he was a RR of the brokerage firm presently handling this account, she thereafter decided to transfer her account to him. Claimant then met the next day with the RR at Respondent's Office, and he prepared reports for her, using Morningstar; however, none of Respondent's required disclosures and disclaimers concerning Morningstar-usage and Morningstar-reporting were ever provided to Claimant. This failure to provide Respondent-required disclaimers and disclosures whenever utilizing Morningstar-information was the norm for this Office of Respondent's. Additionally, the RR failed to provide Claimant with a copy of Respondent's account-transfer ("swing letter") form she signed.

The RR did not speak with Claimant's former broker at Respondent's, even though such other broker remained in Respondent's employment. The RR did not know her portfolio-assets' cost bases. (Even though this was an IRA, when planning, it is often helpful to know what assets initially cost.) The RR did not recall providing any prospectuses to Claimant before or during their initial conference at Respondent's Office. Likewise, until later, the RR could not access the account-in-question, as he could only access his own (versus transferring-in) clients' respective accounts. The RR did not review her prior historical account-statements from Respondent, and also was not familiar with her "prior" investment objective. The RR's handwritten notes from such meeting reflect Claimant's needing only \$600 per month from such account. The RR's daytimer contains no notes about this meeting; in fact, there were no notes in his daytimer about any of his meetings with Claimant.

The RR testified he explained and detailed the risks associated with his proposed transactions in Claimant's account. Claimant denies this. Claimant further contends he did not discuss any specific investment by name. Please assume *arguendo* the RR explained the related risks to Claimant; his recollection of what he then-explained to Claimant was, in all likelihood, not understandable to an investor of Claimant's background, age, and so forth. In fact, to the Panel, itself, his explanations about all of such were less than cogent.

Within days of the account-in-question's transfer to the RR, and after this one meeting at Respondent's Office, all Claimant's stocks and other investments were changed; the entire portfolio was liquidated. Afterwards, the composition of the account was dramatically different, although mostly in better-regarded mutual funds. (The bulk of the RR's business and that of his clients' were invested in "B" shares.) After all the transactions, for example, there were no (0) corporate bonds; 31% of the account's value was invested in one (1) income-fund of Respondent's; and the portfolio lost much of its former diversification among higher-grade, better-known bond-investments. Respondent contends Claimant authorized all of such; Claimant denies authorizing or approving these transactions-at-issue.

Claimant's former average monthly-income of \$2,167 from the account dramatically decreased, to about \$602. Similarly, the account's volatility and risks increased substantially, as the asset-allocation shifted from approximately 2/3's-income to approximately 2/3's-stocks, with 16.97% of the portfolio now in speculative growth. All the transactions were solicited, with \$9,932 in total commissions' being generated. Collectively, all these transactions by the RR within Claimant's account caused Respondent's compliance system to generate a Customer Activity Report (CAR), one of Respondent's compliance tools. While the trading activity in Claimant's account generated a total of three (3) CAR's, Respondent's Branch Manager discussed only one (1) CAR with the RR. No (0) notes were made of such discussion.

Later, on November 8, 2000, after receiving her confirmation-slips from Respondent about these transactions, Claimant contends she called Respondent to complain. Thereafter, the next day, November 9, Claimant met with the RR and his Sales-Assistant; Claimant asserts she again complained about these transactions, assertions Respondent denies. It was the RR's and his Sales-Assistant's practice to code scheduled and planned client-meetings in their online calendars. For example, the symbol "[s]" meant a regularly scheduled service meeting with their clients. Some of the key meetings-at-issue bore no such "[s]" coding – in fact, bore no coding at all.

Thereafter, in January 2001, Claimant again met with Respondent's RR and his Sales-Assistant. Claimant alleges she again expressed complaints about the portfolio's new investments. The RR's Sales Assistant confirms her questioning why her account was decreasing in value. Despite the account's then-having and continuing to have less value, producing less income, etc., the RR did not recommend any alternative course(s) of investment(s). Even when Claimant had to withdraw a lump sum of \$10,000 for necessary living expenses, the RR still did not make any suggestions as to how to rectify her shortage of income. Claimant continued to become ever-more concerned and worried about her IRA's (and correspondingly her) financial situation, but the RR told her, in essence, "she would make lots of money", "not to worry", etc.

Regrettably, over time, the account-in-question lost a substantial amount of money. Claimant then transferred it to another stock brokerage, where she continued to be invested in growth/largely non-income investments.

Claimant's account-information at Respondent had much critical information missing, such as her occupation, marital status, and so forth. Additionally, no annual income was initially shown for her on Respondent's documents; however, after the transactions, an annual income of \$42,000 was supplied by Respondent. Further, Claimant's Exhibit 17, a document of Respondent's, showed her investment objective to be "Income", with no second nor other objective(s) shown. However, in contrast, Mr. Baird's handwritten notes from his initial Office-meeting with Claimant reflected Claimant's investment objectives differently, i.e., #1 – "Capital Appreciation" and #2 – "Aggressive Income". About 2 days after the account-portfolio's total sell-off and re-investment, Claimant's investment objectives were changed in Respondent's computer system. Respondent's printout of Claimant's account showed her investment objectives to again be different, i.e., #1 – "Aggressive Income" and #2 – "Capital Appreciation". At the time of the transactions, Respondent's daily Transaction Activity Report (TAR) reflected her investment objective solely to be "Income".

Whether Claimant verbally complained to the RR and/or to the RR's Branch Manager was disputed. The RR testified he had never had a verbal complaint of any kind from any customer. In fact, the RR did not know what Respondent's verbal-complaint form, another compliance tool, looked like. However, it was undisputed there generally was a failure in such Office to follow Respondent's established-procedures concerning verbal complaints and the reporting thereof. Further, despite having other customer-complaints at or about the same time, the RR testified he did not know who his Compliance Officer(s) was/were. (While other customer-complaints are reflected in the RR's CRD, this pending matter was not so reflected, due to the RR's not being named as a defendant. Further, such other customer-complaints are mentioned in this Award due to the interaction such triggered between the RR and Respondent's Compliance Department; these other customer-complaints never entered into the Panel's deliberative process herein.) The person performing compliance functions in this Office directly reported to and was supervised solely by the Branch Manager. Such Office's

compliance-person also testified in essence the most updated Compliance-Department personnel-chart she saw was a 1992-version; she further was not that familiar with Respondent's applicable compliance manual.

Additionally, and importantly, the Panel had reservations about some of Respondent-employees' and/or former employee's respective testimony. For example, the RR didn't recall if he passed or failed the broker-licensure (Series-7) exam the first time he took it. The RR's lack of recollection about passing or failing could be truthful, and the Panel of course accepted his statement; however, it has been the Panel's collective experience that results from such important licensure-examinations are usually memorable to the recipients.

Despite Claimant's contentions that Respondent's RR misrepresented and continued to misrepresent his investment strategies for her account, as well as his allegedly effectuating unauthorized, inappropriate investments, and continuing to recommend, with no changes, inappropriate investments, she remained his client for quite some time thereafter. Further, despite Claimant's contentions of verbal complaining, she never furnished any written complaint(s) to Respondent. All of the foregoing was troubling to the Panel, especially because on November 15, 2000, soon after some of the key events-in-question, Claimant had an appointment with her Attorney. While meeting then with this Attorney, Claimant shared in essence these contentions about Respondent's and its employees' alleged improper conduct. This Attorney did not regularly render professional legal services concerning securities-matters. Nevertheless, to the Panel, the important point is that, as of such time, all material facts necessary to file certain claims, such as a Florida-Section-517 securities-claim, were known to, or discoverable by, Claimant with due diligence.

We agree with Respondent's contention it is under no (0) obligation to recommend the best-possible portfolio to Claimant; rather, Respondent must recommend a reasonable and rational portfolio suitable to the specific investor. Respondent failed to do so here. While the RR recommended better-regarded mutual funds, Claimant's articulated objective, as well as the objective reflected on Respondent's documents at-the-time of the transactions, was solely income.

Similarly, as previously-noted, we agree with Respondent that Claimant's filing her Statement of Claim on November 26, 2002 was not timely for certain statutory claims concerning Respondent's action(s) and inactions occurring more than 2 years before such time. Claimant argues such 2-year statute of limitations should be equitable tolled due to: Claimant's poor health, Respondent's alleged-inappropriate "hidden" sales-incentives for RR's, etc.; however, the Panel disagrees. Rather, as noted above, the Panel rules certain of Claimant's statutory claims to be time-barred. On November 15, 2000, Claimant visited an Attorney and, among other activities, complained about some of the alleged incidents now-at-issue; as of that date, she fully knew of such.

Admittedly, as Respondent stated, its employee-the RR was a "big producer"; however, this Panel does not have more than one (1) "yardstick" - - we do not decide matters based upon the amount of commissions a broker earns for his/her employer. The amount of commissions earned or not earned is not the issue herein. Rather, how, with what knowledge of the customer, with what risk-disclosure, and by what means such occurred are at-issue herein, including Respondent's supervision and monitoring of the RR.

In examining all the contested matters, the Panel finds the RR was and remained negligent in performing his duties, including his continuing failure to provide Claimant with sufficient information to understand the transactions-in-question, as well as to understand the related risks, and his continuing failure to recommend

suitable investments despite facts which would lead any reasonable broker using due care to so do. Respondent's RR likewise breached his fiduciary duties to her. Similarly, the Respondent was and remained likewise negligent in its supervision of him, as well as being liable due to *respondeat superior*. Some causes of action concerning the RR's and Respondent's respective negligences and breaches of duties were time-barred, whereas others are not. Likewise, Claimant was negligent in failing to timely remedy the damage the RR and Respondent caused.

As is sometimes the case, both Parties failed to timely do what they should have done; however, the far greater preponderance of fault lies with Respondent, especially with its RR. Respondent argues it should not be found liable even if its actions, its records, etc. concerning Claimant were imperfect. Claimant was also imperfect herein. Panel-Members are imperfect. The law does not expect nor demand perfection. We understand how some errors will and do occur. With these given's, however, any responsible review of Respondent's and the RR's respective conduct herein finds such to be far below acceptable standards, including breaching the standards of care and breaching fiduciary duties owed to Claimant concerning monitoring and supervising its employee-the RR.

As announced to the Parties, utilizing one of the Panel's prior Orders, the Panel found Respondent to have been noncompliant with such Order for two (2) days, for a total of \$20,000 in SANCTIONS, of which \$3,000 is AWARDED to Claimant, and the remaining \$17,000, to NASD. Post-Hearing, Claimant urged a greater amount of monetary-sanctions should be assessed and/or a greater amount of sanction-money should be awarded to Claimant. The Panel re-viewed all of such, and AGREES with its prior judgment, as previously announced to the Parties. Some of Respondent's willful pre-Hearing misconduct was indeed bewildering, but thankfully not matched by its commendable conduct at the Hearing.

Respondent contended this Arbitration-at-issue was, at the maximum/worst-case scenario, a "\$50,000 (very small) case", and correspondingly, therefore argued certain matters should be lessened, including: discovery ordered by the Panel; good-faith compliance with Panel-Orders generally; etc. Compliance with Panel-Orders is not dependent on the amount-in-controversy, especially in light of the repeated, repeated warnings this Panel gave to Respondent. Further, Respondent asserted Claimant abused the discovery process by seeking far too much document-production. The Panel noted then, and the record reflects, Claimant's discovery request was "merely" 7-1/2 pages containing 49 requests, whereas Respondent's discovery request was longer (10 pages) and contained more requests (64).

After-the-fact, and during the \$10,000 a-day sanction-phase, Respondent produced the Ordered-documents. In fact, Respondent probably "overproduced" documents, i.e., produced non-Ordered documents. Under the circumstances, there may have been merit in Respondent's "better safe than sorry" approach concerning Panel's Orders; however, such "overproduction" was not necessary - - what was necessary was to timely do what it had been Ordered, warned and re-warned about, etc. Especially troubling was a certification in writing by one of Respondent-Counsel's, assuring and attesting that Respondent had complied with the Panel-Orders; the Panel specifically found such Counsel-certification to be factually inaccurate.

After learning Claimant and/or Respondent had filed something with NASD's Director, trying to remove one, some, or all the Panel, but never knowing or being furnished what, nor knowing if NASD's Director would rule about such, and if so, when, the Panel continued forward with its duties. Due to the Panel's ongoing uncertainty over what, if anything, NASD's Director may have ruled, or may in the future rule, and when such

was, or may be, issued, the Panel elected a most cautious approach concerning its deliberative process. Panelist-Judge Bernard and Chairperson Grubb first deliberated on matters, with Panelist-Judge Bernard's discussing first and voting first, and the Chairperson's discussing and voting thereafter. Then, the Chairperson separately spoke with Panelist-CPA Church, with Panelist-CPA Church's discussing first and voting first. Chairperson Grubb then shared Panelist-Judge Bernard's and her views. *Independently, all Panel-Members were unanimous in their findings of: liability; the statute-of-limitations' barring certain causes of action for certain time-periods, but not others; the amount of monetary sanctions; and so forth.* Thereafter, Chairperson Grubb prepared a proposed draft reflecting their (his and her) views, as she understood them, and circulated it to Panelist-Judge Bernard. He reviewed and analyzed the draft, made suggestions and changes, agreed to such as revised. Such as revised was then shared with Panelist-CPA Church; she of course could agree, disagree, etc. with it, including drafting her own proposed Award to be considered and deliberated about. Panelist-CPA Church agreed fully with the Award, as proposed.

This Award took longer to issue than the Panel would have wished; however, the File herein can best be measured by pounds, rather than inches. Additionally, the Panel's personal notes about matters herein are rather extensive. For example, the Chairperson alone made 49 full-length-pages of hand-written notes concerning the Hearing-testimony and exhibits, and her other full-length-pages of notes concerning the rest of the File totaled over 64 pages. Almost needless to write, it took a substantial amount of time just to review and analyze 113 full-length-pages of hand-written notes, much less all of the underlying File and Hearing documents and exhibits.

Additionally, because there were so many issues to be decided, as might be expected, preparing an Award of this complexity and length required countless, countless hours of Panel-time. Further, many of the days (after the receipt of the last post-Hearing document) were holidays. The Chairperson's Secretary worked much of the holidays, including working virtually all-day Christmas Eve and Christmas Day typing on Award-redrafting and -revisions. It is fair to share the Chairperson likewise worked these days on this Award.

### 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 shall be, and the same hereby is, AWARDED \$87,621.33 from Respondent. The amount and rate of interest the Panel deems applicable has already been added therein, and such interest is current as of the date of this Award.
2. Respondent shall be, and the same hereby is, ORDERED to now-report the Panel's Award concerning placement in the RR's CRD.
3. As noted above, as Sanctions, \$20,000 is ASSESSED AGAINST Respondent, of which \$20,000-sum, \$17,000 shall be, and hereby is, AWARDED to NASD, and \$3,000 AWARDED to Claimant.
4. Claimant's Attorney performed commendably. Due to the statutory statutes-of-limitations' running, however, NO (0) ATTORNEY'S FEES COULD BE RECOMMENDED NOR AWARDED TO Claimant - for example, pursuant to Florida Statute Section 517. It is anticipated and hoped such



Attorney can, and will, be compensated out of the money awarded to Claimant, as, under the facts and circumstances presented, we can not and will not toll any applicable statute-of-limitations. While Claimant's poor health, family problems, trouble finding an Attorney to represent her, etc. are indeed regrettable, all of such cumulatively are insufficient to toll applicable 2-year statutes of limitations concerning certain statutory claims, such as Section 517. Throughout the entire adjudicatory process herein, the Panel followed and adhered to applicable law.

5. Due to all the foregoing, including its AWARD to Claimant, the Panel DOES NOT RECOMMEND NOR AWARD any Attorney's fees or costs to Respondent under Florida Section 517.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, MSDW is a Party.

|                         |              |
|-------------------------|--------------|
| Member surcharge        | = \$1,700.00 |
| Pre-hearing process fee | = \$ 750.00  |
| Hearing process fee     | = \$2,750.00 |
| Total Member Fees       | = \$5,200.00 |

#### **Adjournment Fees**

Adjournment fees were not assessed in this matter.

#### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed Arbitrator travel expenses and costs when an Arbitrator is required to travel outside his or her hearing location and additional Arbitrator *honoraria* for the Hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each Party unless otherwise directed by the Panel.

Injunctive relief fees were not assessed in this matter.

#### **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:

Two (2) Pre-Hearing sessions with the Panel @ \$1,125.00/session = \$2,250.00

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Arbitration No. 02-07298  
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|   |                    |            |               |
|---|--------------------|------------|---------------|
| Pre-Hearing conferences:  | June 10, 2003      | 1 session  |               |
|   | October 13, 2003   | 1 session  |               |
| Four (4) Pre-Hearing sessions with a single Arbitrator @ \$450.00/session |                    |            | = \$1,800.00  |
| Pre-Hearing conferences:  | September 29, 2003 | 1 session  |               |
|   | October 6, 2003    | 1 session  |               |
|   | October 20, 2003   | 1 session  |               |
|   | October 30, 2003   | 1 session  |               |
| Seven (7) Hearing sessions @ \$1,125.00/session                           |                    |            | = \$ 7,875.00 |
| Hearing Dates:  | November 12, 2003  | 2 sessions |               |
|   | November 13, 2003  | 3 sessions |               |
|   | November 14, 2003  | 2 sessions |               |
| <hr/> Total Forum Fees  |                    |            | = \$11,925.00 |

The Panel has assessed the total forum fees of \$11,925.00 to Respondent.

**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.

There were no administrative costs incurred in this matter.

**Fee Summary**

Claimant is solely liable for:

|  |             |
|--|-------------|
| <u>Initial Filing Fee</u>                  | = \$ 300.00 |
| <u>Total Fees</u>                          | = \$ 300.00 |
| <u>Less Payments</u>                       | = \$ 300.00 |
| <u>Balance Due NASD Dispute Resolution</u> | = \$ 0.00   |

Respondent is solely liable for:

|  |               |
|--|---------------|
| <u>Member Fees</u>                         | = \$ 5,200.00 |
| <u>Forum Fees</u>                          | = \$11,925.00 |
| <u>Total Fees</u>                          | = \$17,125.00 |
| <u>Less Payments</u>                       | = \$ 5,200.00 |
| <u>Balance Due NASD Dispute Resolution</u> | = \$11,925.00 |

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

**ARBITRATION PANEL**

(alphabetical order)

|                         |   |  |
|-------------------------|---|--|
| Robert S. Bernard, Esq. | - | Public Arbitrator                        |
| Kathleen Church, CPA    | - | Non-Public Arbitrator                    |
| Kitty G. Grubb, Esq.    | - | Public Arbitrator, Presiding Chairperson |

**Concurring Arbitrators' Signatures**

(alphabetical order)

|                                     |                         |
|-------------------------------------|-------------------------|
| <u>/s/</u>                          | <u>January 12, 2004</u> |
| Robert S. Bernard, Esq.             | Signature Date          |
| (Former ALJ, NY State Dep't. of SS) |                         |
| Public Arbitrator                   |                         |

|                       |                         |
|-----------------------|-------------------------|
| <u>/s/</u>            | <u>January 12, 2004</u> |
| Kathleen Church, CPA  | Signature Date          |
| Non-Public Arbitrator |                         |

|   |                         |
|---|-------------------------|
| <u>/s/</u>                                  | <u>January 12, 2004</u> |
| Kitty G. Grubb, Esq., Presiding Chairperson | Signature Date          |
| Public Arbitrator                           |                         |

January 13, 2004  
Date of Service (For NASD Dispute Resolution office use only)

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**ARBITRATION PANEL**


(alphabetical order)

Robert S. Bernard, Esq.  
Kathleen Church, CPA  
Kitty G. Grubb, Esq.

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

**Concurring Arbitrators' Signatures**

(alphabetical order)

  
Robert S. Bernard, Esq.,  
(Former ALJ, NY State Dep't. of SS)  
Public Arbitrator

1/12/04  
Signature Date

Kathleen Church, CPA  
Non-Public Arbitrator

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

Kitty G. Grubb, Esq., Presiding Chairperson  
Public Arbitrator

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

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

**ARBITRATION PANEL**

(alphabetical order)

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|-------------------------|---|--|
| Robert S. Bernard, Esq. | - | Public Arbitrator                        |
| Kathleen Church, CPA    | - | Non-Public Arbitrator                    |
| Kitty G. Grubb, Esq.    | - | Public Arbitrator, Presiding Chairperson |

**Concurring Arbitrators' Signatures**

(alphabetical order)

\_\_\_\_\_  
Robert S. Bernard, Esq.,  
(Former ALJ, NY State Dep't. of SS)  
Public Arbitrator

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

Kathleen Church, CPA  
Kathleen Church, CPA  
Non-Public Arbitrator

1-12-04  
Signature Date

\_\_\_\_\_  
Kitty G. Grubb, Esq., Presiding Chairperson  
Public Arbitrator

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

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

NASD Dispute Resolution  
Arbitration No. 02-07298  
Award Page 11 of 11

**ARBITRATION PANEL**

(alphabetical order)

|                         |   |  |
|-------------------------|---|--|
| Robert S. Bernard, Esq. | - | Public Arbitrator                        |
| Kathleen Church, CPA    | - | Non-Public Arbitrator                    |
| Kitty G. Grubb, Esq.    | - | Public Arbitrator, Presiding Chairperson |

**Concurring Arbitrators' Signatures**

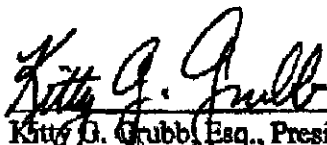
(alphabetical order)

\_\_\_\_\_  
Robert S. Bernard, Esq.,  
(Former ALJ, NY State Dep't. of SS)  
Public Arbitrator

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

\_\_\_\_\_  
Kathleen Church, CPA  
Non-Public Arbitrator

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

  
\_\_\_\_\_  
Kitty G. Grubb, Esq., Presiding Chairperson  
Public Arbitrator

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

\_\_\_\_\_  
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