

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

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In the Matter of the Arbitration Between:

Elaine F. Morrison TTEE The Elaine Morrison Rev. Family Trust dtd 4/27/90, Claimant v.  
Morgan Stanley DW Inc. and Barry A. Stern, Respondents

Case Number: 02-07674

Hearing Site: Los Angeles, California

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

**REPRESENTATION OF PARTIES**

For Claimant:

Arthur S. Leider  
Investors Arbitration Specialists  
San Diego, California

For Respondents:

Kevin K. Fitzgerald, Esq.  
John L. Erikson, Jr., Esq.  
Jones, Bell, Abbott, Fleming & Fitzgerald L.L.P.  
Los Angeles, California

**CASE INFORMATION**

Statement of Claim filed: December 19, 2002

Claimant's Uniform Submission Agreement signed: December 21, 2001

Joint Statement of Answer filed by Respondents: March 27, 2003

Respondent Morgan Stanley DW Inc.'s Uniform Submission Agreement signed: May 20, 2003

Respondent Barry A. Stern's Uniform Submission Agreement signed: March 4, 2003

**CASE SUMMARY**

Claimant alleged breach of fiduciary duty, negligence, fraudulent misrepresentation and omissions, and unsuitability, involving securities in Berkeley Capital Management and Seneca Capital.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

### **RELIEF REQUESTED**

Claimant requested \$240,000.00 in compensatory damages, \$260,000.00 in punitive damages, pre and post award interest, and costs, including filing fees, hearing fees, expert witness fees, and attorney's fees.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety and costs, including attorney's fees. Respondent Barry A. Stern also requested expungement of this matter from his CRD record.

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

On January 18, 2003, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On February 12, 2003, Respondents Morgan Stanley DW Inc. and Barry A. Stern's counsel signed a Waiver Agreement on their behalf expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondents are jointly and severally liable to and shall pay Claimant the sum of \$34,263.00 in compensatory damages.
- 2) Respondents are jointly and severally liable to and shall pay Claimant the sum of \$300.00 for reimbursement of the initial claim filing fee.
- 3) Respondents are jointly and severally liable to and shall pay Claimant the sum of \$1,375.00 in representation fees and costs.
- 4) Respondent Barry A. Stern's request for expungement is denied.
- 5) The parties shall bear their respective costs, except as provided above.

6) All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 300.00
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#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Morgan Stanley DW Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 2,750.00</u>
<b>Total Member Fees</b>	<b>= \$ 5,200.00</b>

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

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

1 Pre-hearing conference session with a single arbitrator @ \$ 450.00/session	= \$ 450.00
Pre-hearing conference: March 19, 2004 1 session	
1 Pre-hearing conference session with the Panel @ \$1,125.00/session	= \$ 1,125.00
Pre-hearing conference: July 23, 2003 1 session	
6 Hearing sessions @ \$1,125.00/session	= \$ 6,750.00
Hearings: March 30, 2004 2 sessions	
March 31, 2004 2 sessions	
April 1, 2004 2 sessions	
<b>Total Forum Fees</b>	<b>= \$ 8,325.00</b>

The Panel assessed \$ 8,325.00 of the forum fees jointly and severally to Respondents.

**Fee Summary**

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
<u>Less payments</u>	<u>= \$(1,425.00)</u>
<b>Refund Due Claimant</b>	<b>= \$(1,125.00)</b>

2. Respondent Morgan Stanley DW Inc. is charged with the following fees and costs:

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

3. Respondents are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 8,325.00
<u>Less payments</u>	<u>= \$( 0.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 8,325.00</b>

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

**ARBITRATION PANEL**

Evelyn Hynson-Woods, Esq.	-	Public Arbitrator, Presiding Chair
Marlyne Rinaldi	-	Public Arbitrator
Barton J. Brewer	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Evelyn Hynson-Woods, Esq.  
Chair, Public Arbitrator

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Signature Date

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Marlyne Rinaldi  
Public Arbitrator

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Signature Date

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Barton J. Brewer  
Non-Public Arbitrator

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Signature Date

4-6-04

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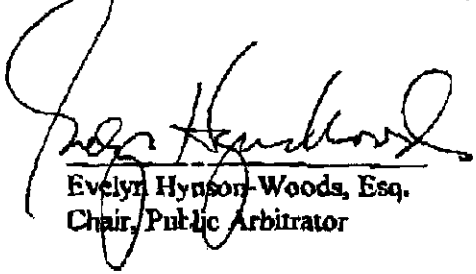
Date of Service

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Evelyn Hynson-Woods, Esq. -  
Marlyne Rinaldi -  
Barton J. Brewer -

Public Arbitrator, Presiding Chair  
Public Arbitrator  
Non-Public Arbitrator

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Chair, Public Arbitrator

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Signature Date

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Marlyne Rinaldi  
Public Arbitrator

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Barton J. Brewer  
Non-Public Arbitrator

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NASD Dispute Resolution  
Arbitration No. 02-07674  
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4-5-04  
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Barton J. Brewer  
Non-Public Arbitrator

4-6-04  
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Signature Date

4-7-04  
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Date of Service