

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

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In the Matter of the Arbitration Between

Name of Claimant

Michael G. Smith

and

Case Number: 02-07690  
Hearing Site: Houston, Texas

Names of Respondents

Morgan Stanley DW, Inc.  
Paul Ralph Scanlin

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**NATURE OF DISPUTE**

Customer v. Member Firm and Associated Person

**REPRESENTATION OF PARTIES**

Michael G. Smith ("**Claimant**") was represented by David E. Dunham, Esq., of Taylor & Dunham, LLP, of Austin, Texas.

Morgan Stanley DW, Inc. ("**MSDW**") and Paul Ralph Scanlin ("**Scanlin**") were represented by Rebecca L. Robertson, Esq., of Baker Botts, LLP, of Houston, Texas.

**CASE INFORMATION**

The Statement of Claim was filed on or about December 20, 2002.

The Submission Agreement of Claimant, Michael G. Smith, was signed on or about December 18, 2002.

The Statement of Answer was filed jointly by Respondents, Morgan Stanley DW, Inc. and Paul Ralph Scanlin, on or about March 20, 2003.

The Submission Agreement of Respondent, Morgan Stanley DW, Inc., was signed on or about March 19, 2003.

The Submission Agreement of Respondent, Paul Ralph Scanlin, was signed on or about April 22, 2003.

### **CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty, omission of facts, suitability, misrepresentations, failure to supervise and negligence. The causes of action relate to the purchase of MSDW American Opportunities Fund C1 B shares, MSDW Information Fund C1 B shares, and MSDW European Growth Fund C1 B shares. The Claimant alleges that Scanlin embarked on an aggressive investment strategy, placing Claimant in several initial public offerings ("IPOs") and flipped those IPOs shortly thereafter. Claimant asserted that the combination of numerous purchases, margin interest and checks written on Claimant's account resulted in a margin debt.

Unless specifically admitted in their Answer, Respondents, Morgan Stanley DW, Inc. and Paul Ralph Scanlin, denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: it was Claimant, not Scanlin, who was the driving force behind Claimant's aggressive investment strategy; neither MSDW nor Scanlin breached any contractual or common law duty owed to Claimant; Claimant's claims are barred under the doctrines of ratification, waiver, estoppel, limitations and laches; Claimant's claims are also barred under the doctrines of comparative responsibility, assumption of risk, and failure to mitigate his alleged damages; and Claimant has failed to state a claim for relief under the Securities Exchange Act of 1934, the Texas Securities Act, and the Texas Deceptive Trade Practices Act.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of:

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

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. At hearing, Respondents asked that they be awarded their forum fees and that Mr. Scanlin's record be expunged.

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

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.) Claimant's claims, each and all, are hereby denied and dismissed with prejudice;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 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 = \$2,250.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$4,000.00

#### **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:

One (1) Pre-hearing session with Panel x \$1200.00		= \$1,200.00
Pre-hearing conference: July 28, 2003	1 session	
Five (5) Hearing sessions x \$1200.00		= \$6,000.00
Hearing Dates: March 2, 2004	2 sessions	
March 3, 2004	2 sessions	
March 4, 2004	1 session	
Total Forum Fees		= \$7,200.00

The Arbitration Panel has assessed \$7,200.00 of the forum fees to Morgan Stanley DW, Inc.

#### FEE SUMMARY

Claimant, Michael G. Smith, is liable for:

Initial Filing Fee	= \$ 375.00
Total Fees	= \$ 375.00
Less payments	= \$1,575.00
Refund Due from NASD Dispute Resolution	= \$1,200.00

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

Member Fees	= \$ 7,000.00
Forum Fees	= \$ 7,200.00
Total Fees	= \$14,200.00
Less payments	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$ 7,200.00

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

**ARBITRATION PANEL**

Sherry R. Wetsch, Esq. - Public Arbitrator, Presiding Chair  
Frank M. Romano - Public Arbitrator  
Hale E. Cullom - Non-Public Arbitrator

**Concurring Arbitrators:**

/s/ Sherry R. Wetsch, Esq.  
Sherry R. Wetsch, Esq.  
Public Arbitrator, Presiding Chair

March 5, 2004  
Signature Date

/s/ Frank M. Romano  
Frank M. Romano  
Public Arbitrator

March 5, 2004  
Signature Date

/s/ Hale E. Cullom  
Hale E. Cullom  
Non-Public Arbitrator

March 5, 2004  
Signature Date

March 5, 2004  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

**Sherry R. Wetsch, Esq. - Public Arbitrator, Presiding Chair**  
**Frank M. Romano - Public Arbitrator**  
**Hale E. Cullom - Non-Public Arbitrator**

**Concurring Arbitrators:**

Sherry R. Wetsch  
Sherry R. Wetsch, Esq.  
Public Arbitrator, Presiding Chair

3-5-04  
Signature Date

**Frank M. Romano**  
**Public Arbitrator**

**Signature Date**

**Hale E. Cullom**  
**Non-Public Arbitrator**

**Signature Date**

**Date of Service (For NASD office use only)**

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Signature Date

  
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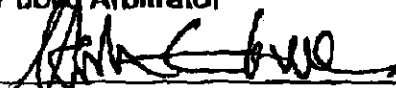
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Public Arbitrator, Presiding Chair

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