

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

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In the Matter of the Arbitration Between:

Martha Gwenn Romano and Frank Romano (Claimants) v. Morgan Stanley DW, Inc., Morgan Stanley & Co., Inc., Robert E. Berg, and Scott Rudnick (Respondents)

Case Number: 02-07693

Hearing Site: New York, New York

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Nature of the Dispute: Customers vs. Members and Associated Persons.

**REPRESENTATION OF PARTIES**

Claimants Martha Gwenn Romano ("M. Romano"), Frank Romano IRA ("F. Romano"), and Martha Gwenn and Frank Romano (the "Romanos") hereinafter collectively referred to as "Claimants": Todd Lampert, Esq., Lampert, Williams & Toohey, LLC, New Canaan, CT.

Respondents Morgan Stanley DW, Inc. ("MSDW"), Morgan Stanley & Co., Inc., ("Morgan Stanley"), Robert E. Berg ("Berg"), and Scott Rudnick ("Rudnick") hereinafter collectively referred to as "Respondents": Ralph DeSena, Esq., Morgan Stanley, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: December 13, 2002.

Claimants signed the Uniform Submission Agreement: December 10, 2002.

Joint Statement of Answer filed by Respondents on or about: June 27, 2003.

Respondent MSDW did not sign the Uniform Submission Agreement.

Respondent Morgan Stanley did not sign the Uniform Submission Agreement.

Respondent Berg did not sign the Uniform Submission Agreement.

Respondent Rudnick did not sign the Uniform Submission Agreement.

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of fiduciary duty; unsuitability; omissions; negligence; unauthorized transactions; improper business conduct and trading practices; breach of implied covenants of good faith and fair dealing; and over-concentration. The causes of action relate to unspecified securities.

Unless specifically admitted in their Answer, Respondents denied the allegations of wrongdoing set forth in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$250,000.00; interest; attorneys' fees; costs; and any other relief the panel deems appropriate.

Respondents requested dismissal of the Statement of Claim in its entirety, with prejudice; costs and expenses of this arbitration; and such other relief as the panel deemed just and proper.

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

Respondents did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and, having answered the claim, are bound by the determination of the Panel on all issues submitted.

On or about August 12, 2004, NASD Dispute Resolution was notified that the parties settled this matter, and on or about August 24, 2004 NASD Dispute Resolution notified the parties that this case was removed from the docket as settled. On or about October 29, 2004, Respondents requested that this matter be re-opened and that the Panel issue this Stipulated Award.

With the consent of Claimants, the Director of Arbitration granted the request to re-open the matter provided that the arbitrators granted the parties' joint request to re-open, and, if the arbitrators granted the request, the arbitrators conducted a teleconference with the parties to determine if the arbitrators should sign this proposed Stipulated Award containing an expungement order.

On April 11, 2005, the parties and arbitrators conducted a telephonic conference with the parties and arbitrators. After reading the Motion and hearing testimony from counsel for Respondents, Mr. DeSena, and after due deliberation, the Panel granted the request for expungement for both Respondents Berg and Rudnick. Because this claim was filed in 2002 (before April 12, 2004), Rule 2130 does not apply. The parties settled this matter in August 2004 and Mr. Williams, the original attorney for Claimants, stated on the record that he had no objections to the expungement.

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

1. Claimants' claims are dismissed in their entirety.

2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Robert E. Berg'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 Robert E. Berg must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Scott Rudnick'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 Scott Rudnick must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
4. Any and all relief not specifically addressed herein is denied.

#### **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	= \$ 300.00
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##### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person at the time of the events giving rise to the dispute. In this matter, Morgan Stanley DW, Inc. and Morgan Stanley & Co., Inc. are parties.

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

##### **Adjournment Fees**

The following adjournment fees are assessed:

June 29-30, 2004, and July 1, 2004, adjournment requested by Claimants	= \$1,125.00
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### **Forum Fees and Assessments**

The 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. Forum fees associated with these proceedings are:

Four (4) Pre-hearing conference sessions with the Panel @ \$1,125.00/session = \$4,500.00

Pre-hearing conferences:	November 17, 2003	1 session
	November 25, 2003	1 session
	July 2, 2004	1 session
	April 11, 2005	1 session

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Total Forum Fees	= \$4,500.00
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1. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure, Claimants M. Romano, F. Romano, and the Romanos have each been assessed \$321.42 of the forum fees for the November 25, 2003 and July 2, 2004 pre-hearing conferences.
2. The Panel determined that the forum fees for the November 17, 2003 pre-hearing conference would not be borne by the Claimants. Therefore, in accordance with Rule 10306 of the NASD Code of Arbitration Procedure, Respondents MSDW, Morgan Stanley, Berg, and Rudnick have each been assessed \$281.25 of the forum fees for the November 17, 2003 pre-hearing conference.
3. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure, Respondents MSDW, Morgan Stanley, Berg, and Rudnick have each been assessed \$321.42 of the forum fees for the November 25, 2003 and July 2, 2004 pre-hearing conferences.
4. The Panel has assessed one-half of the forum fees in the amount of \$562.50 for the April 11, 2005 pre-hearing conference against Respondent Berg.
5. The Panel has assessed one-half of the forum fees in the amount of \$562.50 for the April 11, 2005 pre-hearing conference against Respondent Rudnick.

### **Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Adjournment Fee	= \$1,125.00
<u>Forum Fees</u>	<u>= \$ 321.42</u>
Total Fees	= \$1,746.42
<u>Less payments</u>	<u>= \$1,746.42</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Claimant M. Romano is solely liable for:

<u>Forum Fees</u>	= \$ 321.42
<u>Total Fees</u>	= \$ 321.42
<u>Less payments</u>	= \$ 321.42
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Claimant F. Romano is solely liable for:

<u>Forum Fees</u>	= \$ 321.42
<u>Total Fees</u>	= \$ 321.42
<u>Less payments</u>	= \$ 321.42
Balance Due NASD Dispute Resolution	= \$ 0.00

4. Respondent MSDW is solely liable for:

Member Fees	= \$5,200.00
<u>Forum Fees</u>	= \$ 602.67
<u>Total Fees</u>	= \$5,802.67
<u>Less payments</u>	= \$5,682.14
Balance Due NASD Dispute Resolution	= \$ 120.53

5. Respondent Morgan Stanley is solely liable for:

Member Fees	= \$5,200.00
<u>Forum Fees</u>	= \$ 602.67
<u>Total Fees</u>	= \$5,802.67
<u>Less payments</u>	= \$5,682.14
Balance Due NASD Dispute Resolution	= \$ 120.53

6. Respondent Berg is solely liable for:

<u>Forum Fees</u>	= \$1,165.17
<u>Total Fees</u>	= \$1,165.17
<u>Less payments</u>	= \$ 482.14
Balance Due NASD Dispute Resolution	= \$ 683.03

7. Respondent Rudnick is solely liable for:

<u>Forum Fees</u>	= \$1,165.17
<u>Total Fees</u>	= \$1,165.17
<u>Less payments</u>	= \$ 482.14
Balance Due NASD Dispute Resolution	= \$ 683.03

All balances are due and payable to NASD Dispute Resolution

**Parties' Signatures**



Martha Gwenn Romano  
Claimant by Todd Lampert  
Counsel

4/28/05

Signature Date



Frank Romano  
Claimant by Todd Lampert  
Counsel

4/28/05

Signature Date

Morgan Stanley DW, Inc.  
Respondent

Signature Date

Morgan Stanley & Co., Inc.  
Respondent

Signature Date

Robert E. Berg  
Respondent

Signature Date

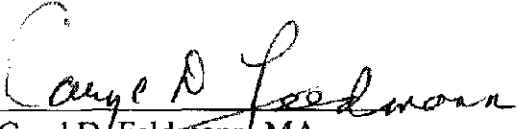
Scott Rudnick  
Respondent

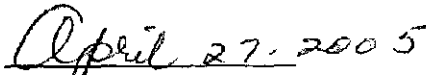
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**ARBITRATION PANEL**

Caryl D. Feldmann, MA	-	Public Arbitrator, Presiding Chair
Eric P. Nachman, Esq.	-	Public Arbitrator
Peter Byer, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Caryl D. Feldmann, MA  
Public Arbitrator, Presiding Chair

  
Signature Date

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Eric P. Nachman, Esq.  
Public Arbitrator

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Signature Date

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Peter Byer, Esq.  
Non-Public Arbitrator

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Signature Date

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May 12, 2005

Date of Service (For NASD office use only)

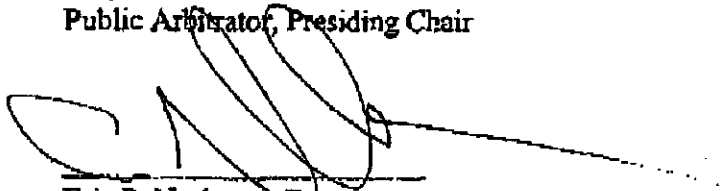
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Public Arbitrator, Presiding Chair

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Non-Public Arbitrator

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Peter Byer, Esq.	-	Non-Public Arbitrator

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Caryl D. Feldmann, MA  
Public Arbitrator, Presiding Chair

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Signature Date

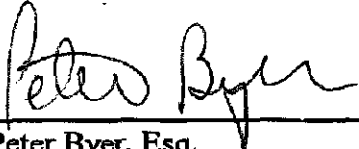
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Eric P. Nachman, Esq.  
Public Arbitrator

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Signature Date

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Peter Byer, Esq.  
Non-Public Arbitrator

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Signature Date

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