

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

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In the Matter of the Arbitration Between:

Gloria L. Lundgren as Executor of the Estate of Ralph J. Lundgren and Gloria L. Lundgren, individually, Claimants v. Morgan Stanley DW Inc. (f/k/a Morgan Stanley Dean Witter) and Alan M. Corwin, Respondents

Case Number: 02-07730

Hearing Site: Seattle, Washington

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

**REPRESENTATION OF PARTIES**

For Claimant:

Richard D. Turner, Esq.  
Eisenhower & Carlson,  
PLLC  
Tacoma, Washington

For Respondent Morgan Stanley DW Inc.  
(f/k/a Morgan Stanley Dean Witter):

Christopher B. Wells, Esq.  
Lane Powell Spears Lubersky  
LLP  
Seattle, Washington

For Respondent Alan M. Corwin:

Alan M. Corwin  
Pro Se  
Olympia, Washington

**CASE INFORMATION**

Initial Statement of Claim filed: December 20, 2002

Claimants' Joint Uniform Submission Agreement signed: December 16, 2002

Claimants' Amended Statement of Claim filed: June 18, 2003

Statement of Answer filed by Respondent Morgan Stanley DW Inc. f/k/a Morgan Stanley Dean Witter (hereinafter "Morgan Stanley DW Inc."): April 2, 2003

Respondent Morgan Stanley DW Inc.'s Uniform Submission Agreement signed: April 2, 2003

Respondent Alan Corwin's Uniform Submission Agreement signed: April 3, 2003

### **CASE SUMMARY**

Claimants' Initial Statement of Claim alleged churning, unsuitability, unauthorized trading, violation of Washington State Securities Act, violation of Washington State Consumer Protection Act, intentional and negligent misrepresentation, breach of fiduciary duty, breach of duty of loyalty, and fraud. Claimants' allegations involved unspecified securities.

Claimants' Amended Statement of Claim provided additional factual details in support of Claimants' claims and alleged excessive use of margin, failure to diversify, and churning in the trading of options in Claimants' account.

Respondent Morgan Stanley DW Inc. denied the allegations of wrongdoing set forth in Claimant's Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants' Initial Statement of Claim requested compensatory damages in an amount not less than \$100,000.00 and not more than \$500,000.00, excess commissions, pre- and post-judgment interest, lost opportunity costs and costs, including attorney's fees.

Respondent Morgan Stanley DW Inc. requested dismissal of Claimants' Statement of Claim in its entirety, forum fees, and costs, including attorney's fees.

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

By letter dated April 2, 2003, Alan M. Corwin joined in Morgan Stanley DW Inc.'s Answer and Motion to Dismiss.

On June 18, 2003, Claimant filed an Amended Statement of Claim pursuant to NASD Code of Arbitration Procedure Rule 10328(a). The Amended Statement of Claim modified the caption of the arbitration proceeding from Ralph J. Lundgren and Gloria L. Lundgren, Claimants v. Morgan Stanley Dean Witter and Alan Corwin, Respondents to Gloria L. Lundgren as Executor of the Estate of Ralph J. Lundgren and Gloria L. Lundgren, individually, Claimants v. Morgan Stanley Dean Witter and Alan M. Corwin, Respondents because Mr. Lundgren had passed away in 2003.

On April 2, 2003, Respondent Morgan Stanley DW Inc. filed a Motion to Dismiss the instant arbitration proceeding. On June 18, 2003, Claimants filed a Response to the Motion to Dismiss. On August 4, 2003, a telephonic pre-hearing conference was held that was attended by Claimants, Respondents, and the Panel. Respondent Morgan Stanley DW Inc. withdrew its motion to dismiss without prejudice.

On September 4, 2003, Claimants filed a Motion to Consolidate the instant arbitration proceeding with NASD arbitration 02-07736. On October 3, 2002, Respondent Morgan Stanley

DW Inc. filed an Opposition to Claimants' motion to consolidate. On October 14, 2003, Claimants filed a Reply in support of their motion to consolidate. On November 11, 2003, a pre-hearing conference was held that was attended by Claimants, Respondent Morgan Stanley DW Inc. and the Panel. After due deliberation, the Panel denied Claimants' motion to consolidate.

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, and the post-hearing submissions, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondents Morgan Stanley and Alan M. Corwin are jointly and severally liable to and shall pay Claimants Gloria L. Lundgren as Executor of the Estate of Ralph J. Lundgren and Gloria L. Lundgren, individually the sum of \$79,000.00 in compensatory damages.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) 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
Hearing Process Fee	= \$ 2,750.00
<b>Total Member Fees</b>	<b>= \$ 5,200.00</b>

#### **Adjournment Fees**

The following adjournment fees are assessed:

March 18-19, 2004, adjournment requested by Claimants = \$ 1,125.00

The Panel assessed the adjournment fee to Claimants.

**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 or the parties and the Panel. The following fees are assessed:

Two (2) pre-hearing conference sessions with the Panel @ \$1,125.00/session	= \$2,250.00
Pre-hearing conferences: August 4, 2003	1 session
November 11, 2003	1 session
Six (6) hearing sessions @ \$1,125.00/session	= \$6,750.00
Hearings: September 29, 2004	2 sessions
September 30, 2004	2 sessions
October 1, 2004	2 sessions
<b>Total Forum Fees</b>	<b>= \$ 9,000.00</b>

The Panel assessed \$9,000.00 of the forum fees jointly and severally to Respondents Morgan Stanley DW Inc. and Alan M. Corwin.

**Fee Summary**

1. Claimants Gloria L. Lundgren as Executor of the Estate of Ralph J. Lundgren and Gloria L. Lundgren, individually are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 300.00
<u>Adjournment Fee</u>	<u>= \$ 1,125.00</u>
Total Fees	= \$ 1,425.00
<u>Less payments</u>	<u>=(1,425.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</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 Morgan Stanley DW Inc. and Alan M. Corwin are charged jointly and severally with the following fees and costs:


<u>Forum Fees</u>	<u>= \$ 9,000.00</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 9,000.00</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**

<i>Michael R.E. Sanders, Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Michael R. Scott</i>	-	<i>Public Arbitrator</i>
<i>David G. Rongerude</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

  
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Michael R.E. Sanders, Esq.  
Chair, Public Arbitrator

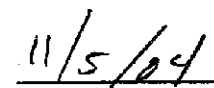
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November 3, 2004  
Signature Date

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Michael R. Scott  
Public Arbitrator

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

\_\_\_\_\_  
David G. Rongerude  
Non-Public Arbitrator

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

  
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Date of Service

NASD Dispute Resolution  
Arbitration No. 02-07730  
Award Page 5 of 5

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*Michael R.E. Sanders, Esq.*  
*Michael R. Scott*  
*David G. Rongerude*

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*Public Arbitrator, Presiding Chair*  
*Public Arbitrator*  
*Non-Public Arbitrator*

**Concurring Arbitrators' Signatures**

Michael R.E. Sanders, Esq.  
Chair, Public Arbitrator

Signature Date

  
Michael R. Scott  
Public Arbitrator

11/3/04  
Signature Date

David G. Rongerude  
Non-Public Arbitrator

Signature Date

11/5/04  
Date of Service

NASD Dispute Resolution  
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Award Page 5 of 5

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<i>Michael R. Scott</i>	-	<i>Public Arbitrator</i>
<i>David G. Rongerude</i>	-	<i>Non-Public Arbitrator</i>

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Chair, Public Arbitrator

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Signature Date

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Michael R. Scott  
Public Arbitrator

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

*David G. Rongerude*  
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David G. Rongerude  
Non-Public Arbitrator

*12/04/04*  
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Signature Date

*11/5/04*  
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Date of Service