

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

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In the Matter of the Arbitration Between

Names of Claimants

Dorothy Stringer and David Gross

vs.

02-07773

Oklahoma City, Oklahoma

Names of Respondents

Morgan Stanley DW, Inc. and Gary D. Wood

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**NATURE OF DISPUTE**

Customers vs. Member and Associated Person

**REPRESENTATION OF PARTIES**

Dorothy Stringer and David Gross ("**Claimants**") were represented by Jerry L. Colclazier, Esq., of Colclazier & Associates, Seminole, Oklahoma.

Morgan Stanley DW, Inc. and Gary D. Wood ("**Respondents**") were represented by Phillip G. Whaley, Esq. of Ryan, Whaley, Hampton & Bomhoff, Oklahoma City, Oklahoma.

**CASE INFORMATION**

The Statement of Claim was filed on or about December 23, 2002. The Submission Agreement of Claimant, Dorothy Stringer, was signed on December 19, 2002. The Submission Agreement of Claimant, David Gross, was signed on December 18, 2002. Claimants' Response to Respondents' Motion for Summary Adjudication/Dismissal was filed on or about December 19, 2003.

The Joint Statement of Answer was filed by Respondents, Morgan Stanley DW, Inc. and Gary D. Wood, on or about April 11, 2003. The Submission Agreement of Respondent, Morgan Stanley DW, Inc., was signed on or about April 3, 2003. The Submission Agreement of Respondent, Gary D. Wood, was signed on or about April 12, 2003. Respondents' Motion for Summary Adjudication/Dismissal of Claimants' Claims was filed on or about November 10, 2003. Respondents' Reply Brief to Claimants' Response to Respondents' Motion for Summary Adjudication/Dismissal of Claimants' Claims was filed on or about January 29, 2004.

### **CASE SUMMARY**

Claimants asserted the following causes of action: misrepresentations and omissions in violation of Section 408(a) of the Oklahoma Securities Act; breach of contract; common law fraud; breach of fiduciary duty; negligence and gross negligence. Claimant, Stringer's, causes of action relate to the recommendation and order execution of high-income securities. Claimant, Gross', causes of action relate to the recommendation and order execution of Dean-Witter High Income Securities, Dividend Growth-Securities B and Liquid Asset Fund. Claimants alleged that Respondents recommended unsuitable investments, which led them to substantial losses.

Unless specifically admitted in their Joint Statement of Answer, Respondents, Morgan Stanley DW, Inc. and Gary D. Wood, denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following:

1. Failure to State a Claim. As set forth above, Claimants' claim fails to state a claim upon which this Panel could award relief to Claimants.
2. Waiver. In further answer to the Statement of Claim, Respondents state that Claimants by their conduct waived any rights to recover herein.
3. Negligence of Others. In further answer to the Statement of Claim, Respondents state that the alleged damages of Claimants were proximately caused by Claimants' own conduct or negligence, or the conduct or negligence of a third party/third parties.
4. Assumption of Risk. In further answer to the Statement of Claim, Respondents state that Claimants knowingly, willingly and voluntarily assumed the risk of any alleged harm of which they now complain.

### **RELIEF REQUESTED**

Claimants requested actual damages and rescission, together with benefit of the bargain damages, attorneys' fees, lost opportunity costs, model portfolio damages, prejudgment interest, costs, punitive damages, and such relief as is deemed necessary and proper.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

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

On February 27, 2004, the panel entered an order in regard to Respondents' Motion for Summary Adjudication/Dismissal, which reflected the following:

Respondents' Motion is sustained as to all claims filed by Claimant, Dorothy Stringer, on the grounds that her claims are barred by the provisions of NASD Rule 10304. The Motion is overruled as to claims filed by David Gross.

At the hearing, the Claimant moved to have the panel Reconsider the Motion filed by Dorothy Springer.

On December 16, 2004, the panel entered an order in regard to Claimant's Motion to Reconsider filed by Dorothy Stringer, which reflected the following:

This matter comes before the Panel on a Motion to Reconsider filed by Dorothy Springer, and after the Motion, and the Response filed by Respondents, said Motion is hereby DENIED.

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 the NASD Dispute Resolution (the "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. Respondents, Morgan Stanley DW, Inc. and Gary D. Wood, are jointly and severally liable for and shall pay to Claimant, David Gross, the sum of \$47,993.86 (Forty-Seven Thousand Nine Hundred Ninety Three Dollars and Eighty Six Cents) in compensatory damages;
2. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice; and
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

### **FEES**

Pursuant to the Code, the following fees are assessed:

### **Filing Fees**

NASD Dispute Resolution will retain the non-refundable filing fee:

Initial claim filing fee	= \$	250.00
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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 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	= \$	1,500.00
Pre-hearing process fee	= \$	750.00
<u>Hearing process fee</u>	= \$	<u>2,200.00</u>
Total Member Fees	= \$	4,450.00

### **Adjournment Fees**

Adjournments granted during these proceedings:

February 18-20, 2004 Hearing Dates, adjournment requested by both parties (\$500.00 is assessed to Claimants, jointly and severally) (\$500.00 is assessed to Respondents, jointly and severally)	= \$	1,000.00
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July 20-22, 2004 Hearing Dates, adjournment requested by Claimant, David Gross	= \$	1,000.00
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### **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:

3 Pre-hearing sessions with Panel	x	1,000.00	\$	3,000.00
September 11, 2003	1	session		
February 18, 2004	1	session		
February 27, 2004	1	session		
1 Pre-hearing session with one Arbitrator	x	450.00	\$	450.00

6 Hearing sessions	December 2, 2004	1 session		
		x	1,000.00	\$ 6,000.00
	December 6, 2004	2 sessions		
	December 7, 2004	2 sessions		
	<u>December 8, 2004</u>	2 sessions		
Total Forum Fees				\$ <u>9,450.00</u>

The Arbitration Panel has assessed \$4,725.00 of the forum fees to David Gross.

The Arbitration Panel has assessed \$2,362.50 of the forum fees to Morgan Stanley DW, Inc.

The Arbitration Panel has assessed \$2,362.50 of the forum fees to Gary D. Wood.

**Fee Summary**

Claimants, Dorothy Stringer and David Gross, are jointly and severally liable for:

Initial Filing Fee	= \$	250.00
<u>Adjournment Fee</u>	= \$	<u>500.00</u>
Total Fees	= \$	750.00
<u>Less payments</u>	= \$	<u>-750.00</u>
Balance Due NASD Dispute Resolution	= \$	0.00

Claimant, David Gross, is liable for:

Adjournment Fee	= \$	1,000.00
<u>Forum Fees</u>	= \$	<u>4,725.00</u>
Total Fees	= \$	5,725.00
<u>Less payments</u>	= \$	<u>-1,375.00</u>
Balance Due NASD Dispute Resolution	= \$	4,350.00

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

Member Fees	= \$	4,450.00
<u>Forum Fees</u>	= \$	<u>2,362.50</u>
Total Fees	= \$	6,812.50
<u>Less payments</u>	= \$	<u>-4,450.00</u>
Balance Due NASD Dispute Resolution	= \$	2,362.50

Respondents, Morgan Stanley DW, Inc. and Gary D. Wood, are jointly and severally liable for:

<u>Adjournment Fee</u>	= \$	<u>500.00</u>
Total Fees	= \$	500.00
<u>Less payments</u>	= \$	<u>-500.00</u>
Balance Due NASD Dispute Resolution	= \$	0.00

Respondent, Gary D. Wood, is liable for:

<u>Forum Fee</u>	= \$	<u>2,362.50</u>
Total Fees	= \$	2,362.50
<u>Less payments</u>	= \$	<u>- 0.00</u>
Balance Due NASD Dispute Resolution	= \$	2,362.50

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

**ARBITRATION PANEL**

Robert Steven Haught, Esq. - Public Arbitrator, Presiding Chair  
Cleve W. Powell - Public Arbitrator  
Michael E. Nelson - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Robert Steven Haught, Esq.  
Robert Steven Haught, Esq.  
Public Arbitrator, Presiding Chair

12/21/04  
Signature Date

/s/ Cleve W. Powell  
Cleve W. Powell  
Public Arbitrator

12/22/04  
Signature Date

/s/ Michael E. Nelson  
Michael E. Nelson  
Non-Public Arbitrator

12/20/04  
Signature Date

12/22/04  
Date of service

<u>Adjournment Fee</u>	= \$	500.00
Total Fees	= \$	500.00
<u>Less payments</u>	= \$	-500.00
Balance Due NASD Dispute Resolution	= \$	0.00

Respondent, Gary D. Wood, is liable for:

<u>Forum Fee</u>	= \$	2,362.50
Total Fees	= \$	2,362.50
<u>Less payments</u>	= \$	- 0.00
Balance Due NASD Dispute Resolution	= \$	2,362.50

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Robert Steven Haught, Esq.  
Public Arbitrator, Presiding Chair

12-21-04  
Signature Date

Cleve W. Powell  
Cleve W. Powell  
Public Arbitrator

Signature Date

Michael E. Nelson  
Michael E. Nelson  
Non-Public Arbitrator

Signature Date

Date of service

Adjournment Fee

Total Fees

Less payments

Balance Due NASD Dispute Resolution

= \$	500.00
= \$	500.00
= \$	-500.00
= \$	0.00

Respondent, Gary D. Wood, is liable for:

Forum Fee

Total Fees

Less payments

Balance Due NASD Dispute Resolution

= \$	2,362.50
= \$	2,362.50
= \$	- 0.00
= \$	2,362.50

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Public Arbitrator

Signature Date

  
Signature Date

Michael E. Nelson  
Non-Public Arbitrator

Signature Date

Date of service



NASD Dispute Resolution, Inc.  
Arbitration No. 02-07773  
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<u>Adjourment Fee</u>	= \$	<u>500.00</u>
Total Fees	= \$	500.00
<u>Less payments</u>	= \$	<u>-500.00</u>
Balance Due NASD Dispute Resolution	= \$	0.00

Respondent, Gary D. Wood, is liable for:

<u>Forum Fee</u>	= \$	<u>2,362.50</u>
Total Fees	= \$	2,362.50
<u>Less payments</u>	= \$	<u>- 0.00</u>
Balance Due NASD Dispute Resolution	= \$	2,362.50

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Public Arbitrator, Presiding Chair

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