

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

---

In the Matter of the Arbitration Between:

Sandra Benezra, Claimant v. Morgan Stanley & Co., Incorporated and Morgan Stanley DW Inc.,  
Respondent

Morgan Stanley & Co., Incorporated and Morgan Stanley DW Inc., Counter-Claimants v. Sandra  
Benezra, Counter-Respondent

Case Number: 03-00057

Hearing Site: Seattle, Washington

---

Nature of the Dispute: Customer v. Members

Nature of the Dispute: Members v. Customer

**REPRESENTATION OF PARTIES**

For Claimant/Counter-Respondent:

Al Van Kampen, Esq.  
Rohde & Van Kampen PLLC  
Seattle, Washington

For Respondents/Counter-Claimants:

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

**CASE INFORMATION**

Statement of Claim filed: December 31, 2002

Claimant/Counter-Respondent's Uniform Submission Agreement signed: December 31, 2002

Joint Statement of Answer filed by Respondents/Counter-Claimants Morgan Stanley & Co.,  
Incorporated and Morgan Stanley DW Inc.: March 26, 2003

Respondent/Counter-Claimant Morgan Stanley DW Inc.'s Uniform Submission Agreement  
signed: February 5, 2003

Respondent/Counter-Claimant Morgan Stanley & Co., Incorporated's Uniform Submission  
Agreement signed: October 6, 2004

Counterclaim filed by Respondents/Counter-Claimants Morgan Stanley & Co., Incorporated and  
Morgan Stanley DW Inc.: March 26, 2003

Reply to Counterclaim filed by Claimant/Counter-Respondent: January 14, 2004

### **CASE SUMMARY**

Claimant/Counter-Respondent's Statement of Claim alleged failure to supervise, violation of NASD and NYSE rules, negligence, breach of fiduciary duty, violation of Washington State Securities Act, fraud, breach of client agreement, and violation of Washington Consumer Protection Act. Claimant/Counter-Respondent's allegations involved transactions in her margin account and stocks such as Capstead Mortgage, Infospace, and Intel.

Respondents/Counter-Claimants denied the allegations of wrongdoing set forth in Claimant/Counter-Respondent's Statement of Claim.

Respondents/Counter-Claimants' Counterclaim alleged breach of General Releases relating to Capstead Mortgage transactions in Claimant/Counter-Respondent's accounts.

Claimant/Counter-Respondent denied the allegations of wrongdoing set forth in Respondents/Counter-Claimants' Counterclaim.

### **RELIEF REQUESTED**

Claimant/Counter-Respondent's Statement of Claim requested over \$500,000.00 in compensatory damages, rescission of transactions that were unauthorized or were made in violation of regulatory rules, securities regulations or SRO standards, return of margin interest charges and commissions, unspecified punitive damages, pre- and post-judgment interest, monetary amount necessary to compensate Claimant/Counter-Respondent for additional income taxes that she will owe on any Award, reimbursement of NASD filing fee and forum fees, and costs, including attorney's fees.

Respondents/Counter-Claimants requested dismissal of Claimant/Counter-Respondent's Statement of Claim in its entirety, reimbursement of NASD forum fees, and costs, including attorney's fees.

Respondents/Counter-Claimants Counterclaim requested \$6,407.78 in compensatory damages.

Claimant/Counter-Respondent requested dismissal of Respondents/Counter-Claimants' Counterclaim in its entirety, reimbursement of NASD forum fees, and costs, including attorney's fees.

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

On May 11, 2004, Respondents/Counter-Claimants Morgan Stanley & Co., Incorporated and Morgan Stanley DW Inc. moved the Panel to dismiss with prejudice all claims against Respondent/Counter-Claimant Morgan Stanley & Co., Incorporated and requested sanctions against Claimant/Counter-Respondent. On May 27, 2004, Claimant/Counter-Respondent

submitted a response to Respondents/Counter-Claimants' motion to dismiss and requested sanctions against Respondent/Counter-Claimants. The Panel deliberated on June 7, 2004, and issued an Order dated June 7, 2004 denying without prejudice Respondents/Counter-Claimants' motion to dismiss and both parties' motions for sanctions.

On October 19, 2004, Respondents/Counter-Claimants Morgan Stanley DW Inc. and Morgan Stanley & Co., Incorporated renewed their motion to dismiss Morgan Stanley & Co., Incorporated and have Morgan Stanley DW, Inc. remain as sole Respondent/Counter-Claimant in this matter. As Claimant/Counter-Respondent did not object, the Panel granted the motion.

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) Respondent/Counter-Claimant Morgan Stanley DW Inc. is liable to and shall pay Claimant/Counter-Respondent Sandra Benezra the sum of \$155,500.00 in compensatory damages.
- 2) Respondent/Counter-Claimant Morgan Stanley DW Inc. is liable to and shall pay Claimant/Counter-Respondent the sum of \$7,000.00 as reimbursement for costs and expert witness fees, etc.
- 3) Respondent/Counter-Claimant Morgan Stanley DW Inc. is liable to and shall pay Claimant/Counter-Respondent the sum of \$59,000.00 in attorney's fees.
- 4) 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
Respondents/Counter-Claimants' Morgan Stanley & Co., Incorporated and Morgan Stanley DW Inc.'s Counterclaim	= \$ 500.00

**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 & Co., Incorporated 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>

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>

**Adjournment Fees**

The following adjournment fees are assessed:

February 9-12, 2004, adjournment requested by Claimant/Counter-Respondent = \$ waived

**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:

Three (3) pre-hearing conference sessions with the Panel @ \$1,125.00/session	= \$ 3,375.00
Pre-hearing conferences:	
July 21, 2003	1 session
March 19, 2004	1 session
May 7, 2004	1 session
Eight (8) Hearing sessions @ \$1,125.00/session	= \$ 9,000.00
Hearings:	
October 18, 2004	2 sessions
October 19, 2004	2 sessions
October 20, 2004	2 sessions
October 21, 2004	2 sessions
<b>Total Forum Fees</b>	<b>= \$12,375.00</b>

1. The Panel assessed \$6,187.50 of the forum fees to Claimant/Counter-Respondent Sandra Benezra.

2. The Panel assessed \$6,187.50 of the forum fees to Respondent/Counter-Claimant Morgan Stanley DW Inc.

**Fee Summary**

1. Claimant/Counter-Respondent Sandra Benezra is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 6,187.50
Total Fees	= \$ 6,487.50
Less payments	= \$(1,425.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 5,062.50</b>
  
2. Respondent/Counter-Claimant Morgan Stanley & Co., Incorporated is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
Less payments	= \$(5,200.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>
  
3. Respondent/Counter-Claimant Morgan Stanley DW Inc. is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 6,187.50
Total Fees	= \$11,387.50
Less payments	= \$ (5,200.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 6,187.50</b>
  
4. Respondents Morgan Stanley DW Inc. and Morgan Stanley & Co., Incorporated are charged with the following fees and costs:

Counterclaim filing fee	= \$ 500.00
Less payments	= \$ (0.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 500.00</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.

NASD Dispute Resolution  
Arbitration No. 03-00057  
Award Page 6 of 6

**ARBITRATION PANEL**

**Ronald L. Peters, J.D.**  
**John F. Lymburner, Esq.**  
**Victor G. Bitar**

-  
-  
-

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

**Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
Ronald L. Peters, J.D.  
Chair, Public Arbitrator

10-30-04  
Signature Date

\_\_\_\_\_  
John F. Lymburner, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Victor G. Bitar  
Non-Public Arbitrator

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

11/3/04  
Date of Service

**ARBITRATION PANEL**

***Ronald L. Peters, J.D.***  
***John F. Lymburner, Esq.***  
***Victor G. Bitar***

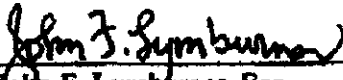
-  
-  
-

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

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Ronald L. Peters, J.D.  
Chair, Public Arbitrator

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

  
\_\_\_\_\_  
John F. Lymburner, Esq.  
Public Arbitrator

November 2, 2004  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Victor G. Bitar  
Non-Public Arbitrator

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

11/3/04  
\_\_\_\_\_  
Date of Service

NASD Dispute Resolution  
Arbitration No. 03-00057  
Award Page 6 of 6

**ARBITRATION PANEL**

*Ronald L. Peters, J.D.*  
*John F. Lymburner, Esq.*  
*Victor G. Bitar*

-  
-  
-

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

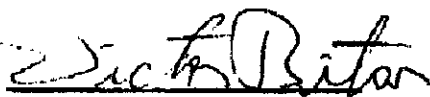
**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Ronald L. Peters, J.D.  
Chair, Public Arbitrator

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

\_\_\_\_\_  
John F. Lymburner, Esq.  
Public Arbitrator

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

  
\_\_\_\_\_  
Victor G. Bitar  
Non-Public Arbitrator

11/02/04  
Signature Date

11/3/04  
Date of Service