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**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimants

Lance Johnson and The Lance Johnson Trust

Case Number: 03-00437

Name of the Respondents

Morgan Stanley DW, Inc., Prudential Securities, n/k/a  
Prudential Equity Group, Access Financial  
and Adam M. Makowka

Hearing Site: Chicago, Illinois

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Nature of the Dispute: Customer vs. Members and Associated Person

**REPRESENTATION OF PARTIES**

Lance Johnson and The Lance Johnson Trust, hereinafter collectively referred to as "Claimants": Paul F. Schofield, Esq. of Siebel, Schofield & Varde, located in Chicago, Illinois.

Morgan Stanley, DW, Inc. ("Morgan Stanley"), hereinafter referred to as "Respondent Morgan Stanley": Renan Sugarman, Esq. of Chicago, Illinois.

Prudential Securities, n/k/a Prudential Equity Group ("Prudential"), hereinafter referred to as "Respondent Prudential": Steven Malina, Esq. of Morgan Lewis & Bockius, located in Chicago, Illinois.

Access Financial ("Access"), hereinafter referred to as "Respondent Access": Jay Hoffman, Esq. of the Law Offices of Jay Hoffman, located in Chicago, Illinois.

Adam M. Makowka, hereinafter referred to as "Respondent Makowka": appeared *pro se*.

**CASE INFORMATION**

Statement of Claim filed on January 17, 2003. Claimants signed the Uniform Submission Agreement on January 8, 2003.

Statement of Answer filed by Morgan Stanley on or about May 13, 2003. Morgan Stanley signed the Uniform Submission Agreement on or about April 28, 2003.

Statement of Answer filed by Access on or about May 1, 2003. Access signed the Uniform Submission Agreement on or about May 5, 2003.

Statement of Answer to Access' Cross-Claim filed by Makowka on or about December 17,

2004. Makowka signed the Uniform Submission Agreement on or about December 6, 2004.

#### **CASE SUMMARY**

Claimant asserted the following causes of action: suitability; fraud; deceit; misrepresentation and omission of material fact; failure to supervise; breach of covenant of good faith and fair dealing; violation of Section 10(b) of the Securities Exchange Act; and violation of Illinois security law; negligence; failure to supervise; breach of the implied covenant of good faith; Claimants' causes of action relate to the purchase and sale of investments in high risk trading, margin purchases and excessive trading of high-risk stock, including TMP Worldwide stock.

Respondent Access filed a Cross-Claim against Adam Makowka on October 28, 2004 in which they alleged breach of contract in connection with promissory notes and indemnity.

Unless specifically admitted in its Answer, Respondent Access denied the allegations made in the Statement of Claim and asserted affirmative defenses, including the following: Johnson confirmed that he understood the risks associated with his large concentration in TMPW stock; Johnson ratified the transactions in his accounts; Claimants' losses were due in large part to his insistence on maintaining a high concentration in TMPW stock.

Unless specifically admitted in its answer, Respondent Prudential denied the allegations made in the Statement of Claim asserted affirmative defenses, including the following: ratification; estoppel; waiver; statute of limitations; laches; contributory negligence; no private cause of action; no action for expressions of opinions; failure to mitigate; appropriate supervision; and damages were caused by intervening acts.

Unless specifically admitted in its answer, Respondent Morgan Stanley denied the allegation in the Statement of Claim and asserted affirmative defense, including the following: Claimants failed to state a claim upon which relief may be granted; at all times herein, Morgan Stanley reasonably followed and adhered to all applicable rules of the National Association of Securities Dealers and the New York Stock Exchange; Claimants have not suffered damages; Claimants failed to mitigate their losses and therefore, are barred from recovery; and Claimants ratified each and every transaction in their account.

Unless specifically admitted in his answer, Makowka denied the allegations in his Statement of Answer to Access' Cross-Claim and asserted affirmative defenses, including the following: Access, Prudential and Morgan Stanley were equally responsible for any damages incurred by the Claimants.

#### **RELIEF REQUESTED**

Claimants requested an award in the amount of \$1,000,000.00 in compensatory damages, plus interest at a rate of 10% per annum as set forth on the Illinois Securities Law at 815 ILCS 5/13. Claimants also requested punitive damages in the amount of \$1,000,000.00, costs and attorney's fees.

Respondents Prudential, Morgan Stanley, Access and Makowka requested that the claims asserted against them be denied in their entirety and that they be awarded costs and attorneys' fees.

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

In February 2005, Respondent Access Financial withdrew their Cross-Claims against Adam Makowka.

On or about June 25, 2005, after five (5) days of hearings, Claimant settled with Morgan Stanley.

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, the 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. Respondent Adam Makowka is liable for and shall pay to Claimant, Lance Johnson and The Lance Johnson Trust, the sum of \$50,000.00 in compensatory damages;
2. All of Claimants' claims against Respondent Prudential Securities, Morgan Stanley and Access Financial are dismissed with prejudice; and
3. Any and all relief not specifically enumerated herein, including punitive damages and attorneys' 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	= \$ 500.00
Cross-claim filing fee	= \$ 2,000.00

#### **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 firms are Morgan Stanley, Prudential and Access. Each firm is charged with the following member fees:

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,000.00

#### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A 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:

Six (6) Pre-hearing sessions with Panel @ \$1,200.00 = \$ 7,200.00

Pre-hearing conferences: November 24, 2003 1 session  
December 15, 2003 1 session  
January 15, 2004 1 session  
February 9, 2004 1 session  
July 5, 2005 1 session  
July 7, 2005 1 session

Twenty-seven (27) Hearing sessions @ \$1,200.00 = \$32,400.00

Hearing Dates: June 22, 2004 2 sessions  
June 23, 2004 2 sessions  
June 24, 2004 2 sessions  
June 25, 2004 2 sessions  
February 22, 2005 2 sessions  
February 23, 2005 2 sessions  
February 24, 2005 2 sessions  
July 11, 2005 3 sessions  
July 12, 2005 3 sessions  
July 13, 2005 3 sessions  
July 14, 2005 2 sessions

Total Forum Fees = \$39,600.00

1. The Panel assessed \$1,440.00 of the forum fees solely to Respondent Morgan Stanley DW, Inc.
2. The Panel assessed \$12,720.00 of the forum fees solely to Respondents Prudential Equity Group.
3. The Panel assessed \$12,720.00 of the forum fees solely to Access Financial.
4. The Panel assessed \$12,720.00 of the forum fees solely to Adam M. Makowka.

#### FEE SUMMARY

1. Claimants, Lance Johnson and The Lance Johnson Trust, are liable for:

Initial Filing Fee = \$ 500.00  
Less payments = \$ 1,800.00  
Refund Due from NASD Dispute Resolution = \$ 1,300.00

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

Member Fees = \$ 8,550.00  
Forum Fees = \$ 1,440.00  
Total Fees = \$ 9,990.00  
Less payments = \$ 8,550.00  
Balance Due NASD Dispute Resolution = \$ 1,440.00

3. Respondent, Prudential Equity Group, is solely liable for:

Member Fees = \$ 8,550.00  
Forum Fees = \$12,720.00  
Total Fees = \$21,270.00  
Less payments = \$13,550.00  
Balance Due NASD Dispute Resolution = \$ 7,720.00

## 4. Respondent, Access Financial, is solely liable for:

Cross-Claim Filing Fee	= \$ 2,000.00
Member Fees	= \$ 8,550.00
<u>Forum Fees</u>	<u>= \$12,720.00</u>
Total Fees	= \$23,270.00
<u>Less payments</u>	<u>= \$ 8,550.00</u>
Balance Due NASD Dispute Resolution	= \$ 14,720.00

## 5. Respondent, Adam M. Makowka, is solely liable for:

Forum Fees	= \$12,720.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 12,720.00

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

**ARBITRATION PANEL**

Richard C. Moenning, Esq.	-	Public Arbitrator, Presiding Chairperson
Richard A. Van Kalker, Esq.	-	Public Arbitrator
William J. Bayer	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/ Richard C. Moenning, Esq.  
Richard C. Moenning, Esq.  
Public Arbitrator, Presiding Chairperson

10/5/05  
Signature Date

/s/ Richard A. Van Kalker, Esq.  
Richard A. Van Kalker, Esq.  
Public Arbitrator

10/4/05  
Signature Date

/s/ William J. Bayer  
William J. Bayer  
Non-Public Arbitrator

10/26/05  
Signature Date

10/5/05  
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution

Arbitration No. 03-00437

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Balance Due NASD Dispute Resolution = \$ 12,720.00

4. Respondent, Access Financial, is solely liable for:

Cross-Claim Filing Fee = \$ 2,000.00

Member Fees = \$ 8,550.00

Forum Fees = \$12,720.00

Total Fees = \$23,270.00

Less payments = \$ 8,550.00

Balance Due NASD Dispute Resolution = \$ 14,720.00

5. Respondent, Adam M. Makowka, is solely liable for:

Forum Fees = \$12,720.00

Less payments = \$ 0.00

Balance Due NASD Dispute Resolution = \$ 12,720.00

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

**ARBITRATION PANEL**

Richard C. Moenning, Esq.

-

Public Arbitrator, Presiding Chairperson

Richard A. Van Kalker, Esq.

-

Public Arbitrator

William J. Bayer

-

Non-Public Arbitrator

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Public Arbitrator, Presiding Chairperson

10-5-05  
Signature Date

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Signature Date

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Non-Public Arbitrator

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NASD Dispute Resolution  
 Arbitration No. 03-00437  
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4. Respondent, Access Financial, is solely liable for:

Cross-Claim Filing Fee	= \$ 2,000.00
Member Fees	= \$ 8,550.00
Forum Fees	= \$12,720.00
Total Fees	= \$23,270.00
Less payments	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 14,720.00

5. Respondent, Adam M. Makowka, is solely liable for:

Forum Fees	= \$12,720.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 12,720.00

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Richard A. Van Kalker, Esq.	-	Public Arbitrator
William J. Bayer	-	Non-Public Arbitrator

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Richard C. Moenning, Esq.  
 Public Arbitrator, Presiding Chairperson

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



Richard A. Van Kalker, Esq.  
 Public Arbitrator

10/4/05  
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William J. Bayer  
 Non-Public Arbitrator

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 Signature Date

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**NASD Dispute Resolution**

Arbitration No. 03-00437

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**4. Respondent, Access Financial, is solely liable for:**

Cross-Claim Filing Fee	= \$ 2,000.00
Member Fees	= \$ 8,550.00
Forum Fees	= \$12,720.00
Total Fees	= \$23,270.00
Less payments	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 14,720.00

**6. Respondent, Adam M. Makowka, is solely liable for:**

Forum Fees	= \$12,720.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 12,720.00

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

**ARBITRATION PANEL**

Richard C. Moenning, Esq.  
Richard A. Van Kalker, Esq.  
William J. Bayer

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator
- Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Richard C. Moenning, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

Richard A. Van Kalker, Esq.  
Public Arbitrator

Signature Date

  
William J. Bayer  
Non-Public Arbitrator

Signature Date

10/26/03

Date of Service (For NASD Dispute Resolution office use only)