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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Estate of Harriet Mead and William Mead

Case Number: 03-00902

Name of the Respondent  
Morgan Stanley DW, Inc.

Hearing Site: Orlando, Florida

Name of the Third Party Respondent  
Glenda Mead

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Nature of the Dispute: Customer vs. Member v. Customer.

**REPRESENTATION OF PARTIES**

For Estate of Harriet Mead and William Mead, hereinafter referred to as "Claimant": William M. Rishoi, Esq., Snyderburn, Rishoi & Swann, Orlando, Florida.

For Morgan Stanley DW, Inc., hereinafter referred to as "Respondent": Tucker H. Byrd, Esq., Greenberg Traurig, P.A., Orlando, Florida.

For Glenda Mead, hereinafter referred to as "Third Party Respondent": William M. Rishoi, Esq., Snyderburn, Rishoi & Swann, Orlando, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: February 5, 2003.

Claimant signed the Uniform Submission Agreement on: January 10, 2003.

Statement of Answer, Defenses and Third Party Claim filed by Respondent on or about: April 9, 2003.

Respondent signed the Uniform Submission Agreement on: April 9, 2003.

Statement of Answer filed by Third Party Respondent on or about: May 15, 2003.

Third Party Respondent signed the Uniform Submission Agreement on: May 5, 2003.

Supplement to Statement of Claim filed by Claimant on or about: January 7, 2004.

Response to Supplement to Statement of Claim and Motion to Strike filed by Respondent on or about: January 28, 2004.

Response to Motion to Strike Supplement to Statement of Claim filed by Claimant on or about: January 29, 2004.

### **CASE SUMMARY**

Claimant alleged the following causes of action: 1) breach of fiduciary duty; 2) negligence; and 3) breach of contract. The causes of action relate to the exchange of unsuitable shares of mutual funds from the Morgan Stanley Dividend Growth Fund to the Morgan Stanley Aggressive Equity B Fund.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various defenses.

Respondent alleged causes of action in its Third Party Claim for contribution and indemnification from Third Party Respondent.

Unless specifically admitted in her Answer, Third Party Respondent denied the allegations made in the Third Party Claim and asserted various defenses.

### **RELIEF REQUESTED**

Claimant requested: 1) compensatory damages in the amount of \$46,000.00; 2) punitive damages; 3) interest; 4) costs; and 5) such other relief the undersigned arbitrators (the "Panel") deemed just and proper.

Respondent requested: 1) dismissal of the Statement of Claim in its entirety; 2) contribution and/or indemnification from Third Party Respondent; 3) costs; 4) attorneys' fees; and 5) such other relief the Panel deemed just and proper.

Third Party Respondent requested dismissal of the Third Party Claim.

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

On or about March 24, 2004, William Mead, as the Personal Representative of the Estate of Harriet Mead, filed a motion to substitute the Estate of Harriet Mead for Harriet Mead. Respondent and Third Party Respondent consented to the motion at the telephonic pre-hearing conference held on April 5, 2004. On or about April 6, 2004, the Panel granted the motion.

On or about January 28, 2004, Respondent filed its Response to Supplement to Statement of Claim and Motion to Strike. On or about January 29, 2004, Claimant filed a Response to Motion to Strike Supplement to Statement of Claim. On or about April 6, 2004, the Panel denied 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, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are denied in their entirety.
2. Respondent's third party claims are denied in their entirety.
3. Any and all claims for relief, including Claimant's request for punitive damages and Respondent's request for attorneys' fees, not specifically addressed herein are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

#### **Filing Fees**

NASD will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 175.00
Third Party claim filing fee	= \$1,000.00

#### **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. Accordingly, Respondent is a member firm and a party.

Member surcharge	= \$ 875.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,000.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

On or about May 3, 2004, Claimant filed a motion to postpone the evidentiary hearing date of June 15, 2004. Respondent and Third Party Respondent did not object to the motion. On or about May 14, 2004, the Panel granted the motion, postponed the evidentiary hearing date of June 15, 2004, and waived the adjournment fee in the amount of \$600.00.

#### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

There were no injunctive relief fees assessed during these proceedings.

**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:

Two (2) Pre-hearing sessions with Panel @ \$600.00 per session	= \$1,200.00
Pre-hearing conferences:      October 23, 2003      1 session	
April 5, 2004      1 session	
Four (4) Hearing sessions @ \$600.00 per session	= \$2,400.00
Hearing Dates:                  June 16, 2004      2 sessions	
June 17, 2004      2 sessions	
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Total Forum Fees	= \$3,600.00

The Panel has assessed forum fees in the amount of \$1,800.00 to Claimant.

The Panel has assessed forum fees in the amount of \$1,800.00 to Respondent.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 175.00
Forum Fees	= \$1,800.00
Total Fees	= \$1,975.00
Less payments	= \$ 775.00
Balance Due NASD Dispute Resolution	= \$1,200.00

Respondent is solely liable for:

Third Party Claim Filing Fee	= \$1,000.00
Member Fees	= \$2,625.00
Forum Fees	= \$1,800.00
Total Fees	= \$5,425.00
Less payments	= \$4,225.00
Balance Due NASD Dispute Resolution	= \$1,200.00

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

**ARBITRATION PANEL**

<i>Andrew J. Bolnick</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Donald R. Ormrod, Sr.</i>	-	<i>Public Arbitrator</i>
<i>Patrick D. King</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

<u>                    /s/                    </u>	<u>June 23, 2004</u>
Andrew J. Bolnick	Signature Date
Public Arbitrator, Presiding Chairperson	

<u>                    /s/                    </u>	<u>June 23, 2004</u>
Donald R. Ormrod, Sr.	Signature Date
Public Arbitrator	

<u>                    /s/                    </u>	<u>June 22, 2004</u>
Patrick D. King	Signature Date
Non-Public Arbitrator	

June 24, 2004  
Date of Service (For NASD Dispute Resolution office use only)

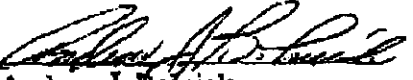
NASD Dispute Resolution  
Arbitration No. 03-00902  
Award Page 5

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ARBITRATION PANEL

Andrew J. Bolnick	-	Public Arbitrator, Presiding Chairperson
Donald R. Ormrod, Sr.	-	Public Arbitrator
Patrick D. King	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

  
Andrew J. Bolnick  
Public Arbitrator, Presiding Chairperson

6-23-04  
Signature Date

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Donald R. Ormrod, Sr.  
Public Arbitrator

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

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Patrick D. King  
Non-Public Arbitrator

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Signature Date

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

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NASD Dispute Resolution  
Arbitration No. 03-00902  
Award Page 5

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Donald R. Ormrod, Sr.	-	Public Arbitrator
Patrick D. King	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Andrew J. Bolnick  
Public Arbitrator, Presiding Chairperson

Signature Date

*Donald R. Ormrod, Sr.*  
Donald R. Ormrod, Sr.  
Public Arbitrator

*June 23<sup>04</sup>*  
Signature Date

Patrick D. King  
Non-Public Arbitrator

Signature Date

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

**NASD Dispute Resolution**  
**Arbitration No. 03-00902**  
**Award Page 5**

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**ARBITRATION PANEL**

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<i>Donald R. Ormrod, Sr.</i>	-	<i>Public Arbitrator</i>
<i>Patrick D. King</i>	-	<i>Non-Public Arbitrator</i>

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**Andrew J. Bolnick**  
**Public Arbitrator, Presiding Chairperson**

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

\_\_\_\_\_  
**Donald R. Ormrod, Sr.**  
**Public Arbitrator**

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

*Patrick D. King*  
\_\_\_\_\_  
**Patrick D. King**  
**Non-Public Arbitrator**

*6/22/04*  
\_\_\_\_\_  
**Signature Date**

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