

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

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In the Matter of the Arbitration Between:

Mark Elliot Schlanger, individually, and on behalf of the Martin Schlanger IRRE Trust #1 U/A/D 6/11/90, Mark E. Schlanger, TTEE, Mark Schlanger Cust for Lee Erik Schlanger UTMA/FL, and The Martin Motor Sales, Inc. Trust FBO Anthony Chianese DTD 2/18/97, Mark Schlanger, TTEE (Claimants) v. Morgan Stanley DW, Inc. and William Richard Fox (Respondents)

Case Number: 03-01059

Hearing Site: New York, New York

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

**REPRESENTATION OF PARTIES**

Claimants Mark Elliot Schlanger, individually ("Schlanger"), and on behalf of the Martin Schlanger IRRE Trust #1 U/A/D 6/11/90, Mark E. Schlanger, TTEE ("Schlanger IRRE Trust"), Mark Schlanger Cust for Lee Erik Schlanger UTMA/FL (Schlanger Cust for L. Schlanger"), and The Martin Motor Sales, Inc. Trust FBO Anthony Chianese DTD 2/18/97, Mark Schlanger, TTEE ("Martin Motor Sales") hereinafter collectively referred to as "Claimants"; Ross B. Intelisano, Esq., Rich Intelisano, LLP, New York, NY.

Respondents Morgan Stanley DW, Inc. ("MSDW") and William Richard Fox ("Fox") hereinafter collectively referred to as "Respondents"; Laura J. Starr, Esq., Peter J. Aldrich, P.A., Palm Beach Gardens, FL.

**CASE INFORMATION**

Statement of Claim filed on or about: February 7, 2003.

Reply to Respondents' Counterclaims filed on or about: October 2, 2003.

Claimants signed the Uniform Submission Agreement: February 5, 2003.

Joint Statement of Answer, Defenses/Affirmative Defenses, and Counterclaims filed by Respondents on or about: June 16, 2003.

Respondent Fox signed the Uniform Submission Agreement: September 25, 2004.

Respondent MSDW signed the Uniform Submission Agreement: July 7, 2003.

**CASE SUMMARY**

Claimants asserted the following causes of action: unsuitability; misrepresentations and omissions; fraud; breach of fiduciary obligations; failure to supervise; breach of customer agreement; negligence, gross negligence, and negligent supervision; respondeat superior; and...

violation of Sections 517.301 and 812.014 of the Florida statutes. The causes of action relate to various mutual funds, common stocks, and corporate bonds.

Unless specifically admitted in their Answer to the Counterclaim, Claimants denied the allegations made in the Counterclaim and asserted various affirmative defenses.

Unless specifically admitted in their Answer, Respondents denied the allegations of wrongdoing set forth in the Statement of Claim and asserted various affirmative defenses. In their Counterclaim, Respondents asserted the following cause of action: indemnification.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$700,000.00; rescission and other damages; disgorgement of Respondents' compensation; punitive damages; reasonable attorneys' fees pursuant to Sections 517.301 and 772.11 of the Florida statutes; treble damages in the amount of \$1,400,000.00 pursuant to Section 772.11 of the Florida statutes; interest from the date of loss to the date of the award; costs, expert and witness fees and administrative expenses; and any other and further relief that the Panel finds just and equitable.

In their Reply to the Counterclaim, Claimants requested that the Counterclaim be denied in its entirety, attorneys' fees and costs.

Respondents requested that if they are found liable for any of the claims alleged by Claimants, then they are entitled to hold Schlanger accountable for any damages in the trust accounts that equals the liability in favor of Claimants; that all claims asserted by the Claimants be denied in their entirety; and that all references to this incident be expunged from Respondent Fox's CRD record.

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

On or about August 7, 2003, Claimants notified NASD Dispute Resolution that they withdrew, with prejudice, their claims against Respondent Fox.

On or about September 14, 2004, Claimants notified NASD Dispute Resolution that the parties settled this matter and voluntarily dismissed the claims against Respondent MSDW and were requesting the entry of a Stipulated Award.

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**

The parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of both parties for an entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

1. The claims of Claimants are dismissed in their entirety.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent William Richard Fox's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Fox must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.
3. Any and all relief not specifically addressed herein

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 500.00
Counterclaim 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, Morgan Stanley DW, Inc. is a party.

Member Surcharge	= \$2,800.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$5,000.00</u>
Total Member Fees	= \$8,550.00

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

The 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. Forum fees associated with these proceedings are:

Two (2) Pre-hearing conference sessions with a single arbitrator @ \$450.00/session = \$ 900.00

Pre-hearing conferences: April 26, 2004 1 session  
May 12, 2004 1 session

One (1) Pre-hearing conference session with the Panel @ \$1,200.00/session = \$1,200.00  
Pre-hearing conference: November 17, 2003 1 session  
Total Forum Fees = \$2,100.00

1. The Panel has assessed \$1,050.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$1,050.00 of the forum fees against Respondent.

*In accordance with Rules 10332(f)/10205(f) of the NASD Code of Arbitration Procedure, the NASD is retaining the balance of the hearing session deposit submitted by Claimants and Respondents since this office was notified by the parties that they settled this matter within 8 business days of the first scheduled hearing session.*

**Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$1,200.00
Total Fees	= \$1,700.00
Less payments	= \$1,700.00
Refund Due Claimants	= \$ 0.00
2. Respondent MSDW is solely liable for:

Member Fees	= \$8,550.00
Forum Fees	= \$1,200.00
Total Fees	= \$9,750.00
Less payments	= \$8,550.00
Balance Due NASD Dispute Resolution	= \$1,200.00
3. Respondents are jointly and severally liable for:

Counterclaim Filing Fee	= \$2,000.00
Total Fees	= \$2,000.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$2,000.00

All balances are due and payable to NASD Dispute Resolution

Parties' Signatures

Mark Elliott Schlanger, Individually  
And on behalf of the Martin Schlanger  
IRRE Trust #1 U/A/D 6/11/90, Mark  
E. Schlanger, TTEE, Mark Schlanger Cust  
for Lee Erik Schlanger UTMA/FL, and  
The Martin Motor Sales, Inc. Trust FBO  
Anthony Chianese DTD 2/18/97, Mark Schlanger, TTEE  
Claimants



Morgan Stanley DW, Inc.  
Respondent

Signature Date

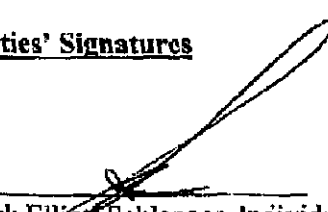
12/21/04

Signature Date

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Arbitration No. 03-01059  
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**Parties' Signatures**



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Mark Elliott Schlanger, Individually  
And on behalf of the Martin Schlanger  
IRRE Trust #1 U/A/D 6/11/90, Mark  
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for Leo Erik Schlanger UTMA/FL, and  
The Martin Motor Sales, Inc. Trust FBO  
Anthony Chianese DTD 2/18/97, Mark Schlanger, TTEE  
Claimants

1/26/2005  
Signature Date

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Morgan Stanley DW, Inc.  
Respondent

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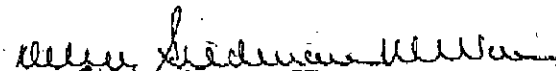
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ARBITRATION PANEL

Debra Seidman DeWan, Esq.	-	Public Arbitrator, Presiding Chair
John E. Rothschild	-	Public Arbitrator
Karen M. Cullen, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument in which is my award.

  
Debra Seidman DeWan, Esq.  
Public Arbitrator, Presiding Chair

2/17/05  
Signature Date

John E. Rothschild  
Public Arbitrator

Signature Date

Karen M. Cullen, Esq.  
Non-Public Arbitrator

Signature Date

February 22, 2005  
Date of Service (For NASD office use only)

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Arbitration No. 03-01059  
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Public Arbitrator, Presiding Chair

Signature Date



John E. Rothschild  
Public Arbitrator

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Public Arbitrator, Presiding Chair

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Signature Date

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John E. Rothschild  
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