

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

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In the Matter of the Arbitration Between

Names of Claimants

Lawrence S. Katz and Karen A. Katz

and

Case Number: 03-01264  
Hearing Site: Southfield, Michigan

Names of Respondents

Morgan Stanley DW Inc.  
Morgan Stanley Dean Witter & Co.  
The Sasson Group and  
Albert A. Sasson

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**NATURE OF DISPUTE**

Customers v. Member, Non-Members and Associated Person

**REPRESENTATION OF PARTIES**

Lawrence S. Katz and Karen A. Katz ("Claimants") were represented by Anthony V. Trogan, Esq., and Lysa Postula-Stein, Esq., West Bloomfield, Michigan.

Morgan Stanley DW Inc. ("MSDW"), Morgan Stanley Dean Witter & Co. ("MSDW & Co"), The Sasson Group ("SG"), and Albert A. Sasson ("Sasson") were represented by Mark R. Werder, Esq., Honigman Miller Schwartz & Cohn, Detroit, Michigan and Ronald E. Wood, Esq., Morgan Stanley Dean Witter & Co., San Francisco, California.

**CASE INFORMATION**

The Statement of Claim was filed on or about February 21, 2003. The Submission Agreement of Claimants Lawrence S. Katz and Karen A. Katz was signed on or about February 13, 2003.

Statement of Answer was filed jointly by Respondents Morgan Stanley DW Inc. Morgan Stanley Dean Witter & Co., The Sasson Group, and Albert A. Sasson on or about May 7, 2003. The Submission Agreement of Respondent Morgan Stanley DW Inc. was signed on or about May 6, 2003 by Ronald E. Wood. The Submission Agreement of Respondent Albert A. Sasson was signed on or about May 12, 2003.

### **CASE SUMMARY**

Claimants asserted the following legal theories: breach of contract, common laws fraud, conspiracy, promissory estoppel, negligence, malpractice, breach of fiduciary duty, breach of Michigan securities law. The causes of action relate to Claimants' allegations that Respondents misdirected Claimants' money into investments with an unacceptable and inappropriate degree of risk, including: Van Kemper Emerging Growth B and C shares, Alliance Premier Growth B and C shares, Putnam New Opportunities, Van Kampen Internet Unit Investment Trust Series A19, Van Kampen Telecommunications and Bandwith A9, Van Kampen Semiconductor A1, Van Kampen Pharmaceuticals Trust A9, Sun Life Regatta Annuity, and MFS Emerging Growth B series.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimants were fully apprised of all risks associated with the investments made in their accounts and assumed such risks in the ordinary course of selecting their investments; any diminution in the value of Claimants' accounts was the result of market forces beyond Respondents' influence or control; and, Claimants' acceptance of, and failure to refute all trades effected in their account preclude them from now contesting the selection of such investments under the theories of waiver, ratification, and estoppel.

### **RELIEF REQUESTED**

Claimants requested an award in the amount of \$443,000.00 in out-of pocket losses, plus interest, costs, attorney fees, exemplary and punitive damages, rescission, and additional damages as determined by the Panel.

Respondents requested that the claims asserted against them be dismissed in their entirety.

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

Respondents, Morgan Stanley DW Inc. and The Sasson Group, did not file with the NASD Dispute Resolution a properly executed submissions to arbitration but having answered the claim and appeared and testified at the hearing are bound by the determination of the arbitration panel on all issues submitted.

Respondents filed a counterpart submission of caselaw on or about March 22, 2004.

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 NASD Dispute Resolution ("NASD").

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submission, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Respondents, Morgan Stanley DW Inc., Morgan Stanley Dean Witter & Co., The Sasson Group, and Albert A. Sasson, are jointly and severally liable for and shall pay to Claimant, Lawrence S. Katz and Karen A. Katz, the sum of \$75,000.00 in compensatory damages;
- 2.) That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 3.) That any relief not specifically enumerated, including exemplary/punitive damages and attorney 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 = \$ 300.00

#### **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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is Morgan Stanley DW Inc.

Member surcharge = \$1,700.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$2,750.00

#### **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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator x \$450.00 = \$ 450.00  
Pre-hearing conference: February 26, 2004 1 session

One (1) Pre-hearing session with Panel x \$1,125.00 = \$1,125.00  
Pre-hearing conference: September 16, 2003 1 session

Six (6) Hearing sessions x \$1,125.00 = \$6,750.00  
Hearing Dates: March 16, 2004 2 sessions  
March 17, 2004 2 sessions  
March 18, 2004 2 sessions

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Total Forum Fees = \$8,325.00

The Arbitration Panel has assessed \$4,162.50 of the forum fees jointly and severally to Lawrence S. Katz and Karen A. Katz.

The Arbitration Panel has assessed \$4,162.50 of the forum fees jointly and severally to Morgan Stanley DW Inc. Morgan Stanely Dean Witter & Co. The Sasson Group Albert A. Sasson.

### Fee Summary

Claimants, Lawrence S. Katz and Karen A. Katz, are jointly and severally liable for:

|                                     |              |
|-------------------------------------|--------------|
| Initial Filing Fee                  | = \$ 300.00  |
| Forum Fees                          | = \$4,162.50 |
| Total Fees                          | = \$4,462.50 |
| Less payments                       | = \$1,425.00 |
| Balance Due NASD Dispute Resolution | = \$3,037.50 |

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

|                                     |              |
|-------------------------------------|--------------|
| Member Fees                         | = \$5,200.00 |
| Total Fees                          | = \$5,200.00 |
| Less payments                       | = \$5,200.00 |
| Balance Due NASD Dispute Resolution | = \$ 0.00    |

Respondents, Morgan Stanley DW Inc. Morgan Stanely Dean Witter & Co. The Sasson Group Albert A. Sasson, are jointly and severally liable for:

|                                     |              |
|-------------------------------------|--------------|
| Forum Fees                          | = \$4,162.50 |
| Total Fees                          | = \$4,162.50 |
| Less payments                       | = \$ 0.00    |
| Balance Due NASD Dispute Resolution | = \$4,162.50 |

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

**ARBITRATION PANEL**

Robert J. Scafuri, Esq. - Public Arbitrator, Presiding Chair  
David L. Haron, JD - Public Arbitrator  
William C. Kubicz - Non-Public Arbitrator

**Concurring Arbitrators:**

/s/ Robert J. Scafuri, Esq.  
Robert J. Scafuri, Esq.  
Public Arbitrator, Presiding Chair

03/22/04  
Signature Date

/s/ David L. Haron, JD  
David L. Haron, JD  
Public Arbitrator

03/22/04  
Signature Date

/s/ William C. Kubicz  
William C. Kubicz  
Non-Public Arbitrator

03/22/04  
Signature Date

03/23/04  
Date of Service (For NASD office use only)

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**ARBITRATION PANEL**

Robert J. Scafuri, Esq. - Public Arbitrator, Presiding Chair  
David L. Haron, JD - Public Arbitrator  
William C. Kubicz - Non-Public Arbitrator

**Concurring Arbitrators:**

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Public Arbitrator, Presiding Chair

  
\_\_\_\_\_  
David L. Haron, JD  
Public Arbitrator

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

3/22/04  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
William C. Kubicz  
Non-Public Arbitrator

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

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Signature Date

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David L. Haron, JD  
Public Arbitrator

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

*William C. Kubicz*  
\_\_\_\_\_  
William C. Kubicz  
Non-Public Arbitrator

*3/22/04*  
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NASD Dispute Resolution  
Arbitration No. 03-01264  
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**ARBITRATION PANEL**

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David L. Haron, JD - Public Arbitrator  
William C. Kubicz - Non-Public Arbitrator

**Concurring Arbitrators:**

  
Robert J. Scafuri, Esq.  
Public Arbitrator, Presiding Chair

3/22/07  
Signature Date

\_\_\_\_\_  
David L. Haron, JD  
Public Arbitrator

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

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William C. Kubicz  
Non-Public Arbitrator

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

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Date of Service (For NASD office use only)