

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

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In the Matter of the Arbitration Between:

Donald R. Askew and Jackie M. Askew, Claimants v. Morgan Stanley DW Inc., Grant R. Stephens, and Fred J. Borzoni, Respondents

Case Number: 03-01462

Hearing Site: San Francisco, California

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Nature of the Dispute: Customers vs. Member and Associated Persons

**REPRESENTATION OF PARTIES**

For Claimants:

Irving M. Einhorn, Esq.  
Law Offices of Irving M. Einhorn  
Manhattan Beach, California

For Respondents:

David Z. Seide, Esq.  
Morgan Stanley DW Inc.  
Los Angeles, California

**CASE INFORMATION**

Statement of Claim filed: February 27, 2003

Claimants' Joint Uniform Submission Agreement signed: February 24, 2003

Joint Statement of Answer filed by Respondents Morgan Stanley DW Inc., Grant R. Stephens, and Fred J. Borzoni: May 21, 2003

Statement of Answer filed by Respondent Grant R. Stephens: April 23, 2003

Respondent Fred J. Borzoni's Uniform Submission Agreement signed: June 2, 2003

**CASE SUMMARY**

Claimants alleged suitability, breach of fiduciary duty, intentional misrepresentation, fraud, deceit, breach of covenant of good faith and fair dealing, negligence, and breach of contract. The dispute involved the purchase and/or sale of unspecified securities.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$316,391.00, punitive damages in the amount of \$500,000.00, attorney's fees, and arbitration costs.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety and arbitration costs. Additionally, Respondents Grant R. Stephens and Fred J. Borzoni requested that all references to this matter be expunged from their CRD records.

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

Respondent Morgan Stanley DW Inc. did not file with the NASD Dispute Resolution a properly executed submission agreement but is required to submit to arbitration pursuant to the Code and having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

Respondent Grant R. Stephens did not file with the NASD Dispute Resolution a properly executed submission agreement but is required to submit to arbitration pursuant to the Code and having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

On March 21, 2003, Claimants and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On April 23, 2003, Respondent Grant R. Stephens signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On May 13, 2003, Respondents Morgan Stanley DW Inc., Grant R. Stephens, and Fred J. Borzoni's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

At the hearing, Respondents made a motion for directed verdict. After due deliberation, 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, testimony, and evidence presented at the hearing, Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent Morgan Stanley DW Inc. is liable to and shall pay Claimants Donald R. Askew and Jackie M. Askew \$238,000.00 in compensatory damages.
- 2) Respondent Morgan Stanley DW Inc. is liable to and shall pay Claimants Donald R. Askew and Jackie M. Askew \$187.50 as reimbursement for half of Claimants' filing fee.
- 3) Claimants' request for punitive damages is denied.
- 4) Respondents Grant R. Stephens and Fred J. Borzoni are dismissed with prejudice.
- 5) The parties shall bear their respective costs (except as mentioned above) including attorney's fees.
- 6) 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	= \$ 375.00
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#### **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 DW Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 2,250.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 4,000.00</u>
<b>Total Member Fees</b>	<b>= \$ 7,000.00</b>

**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 Panel. The following fees are assessed:

One (1) Pre-hearing conference session with the Panel @ \$1,200.00/session	= \$ 1,200.00
Pre-hearing conference:      October 15, 2003      1 session	
Four (4) Hearing sessions @ \$1,200.00/session	= \$ 4,800.00
Hearings:      May 12, 2004      2 sessions	
May 13, 2004      2 sessions	
<b>Total Forum Fees</b>	<b>= \$ 6,000.00</b>

The Panel assessed \$6,000.00 of the forum fees to Respondent Morgan Stanley DW Inc.

**Fee Summary**

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 375.00
<u>Less payments</u>	<u>= \$(1,575.00)</u>
<b>Refund Due Claimants</b>	<b>= \$(1,200.00)</b>
2. Respondent Morgan Stanley DW Inc. is charged with the following fees and costs:

Member Fees	= \$ 7,000.00
<u>Forum Fees</u>	<u>= \$ 6,000.00</u>
Total Fees	= \$13,000.00
<u>Less payments</u>	<u>= \$(7,000.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 6,000.00</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.

**ARBITRATION PANEL**

Richard L. Rubin, Esq.	-	Public Arbitrator, Presiding Chair
Armin Rosencranz	-	Public Arbitrator
Mark R. Palmer	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Richard L. Rubin, Esq.  
Chair, Public Arbitrator

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Signature Date

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Armin Rosencranz  
Public Arbitrator

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Signature Date

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Mark R. Palmer  
Non-Public Arbitrator

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Signature Date

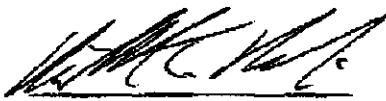
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Date of Service

**ARBITRATION PANEL**

Richard L. Rubin, Esq.	-	Public Arbitrator, Presiding Chair
Armin Rosencranz	-	Public Arbitrator
Mark R. Palmer	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



Richard L. Rubin, Esq.  
Chair, Public Arbitrator

May 19, 2004  
Signature Date

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Armin Rosencranz  
Public Arbitrator

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Signature Date

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Mark R. Palmer  
Non-Public Arbitrator

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Signature Date

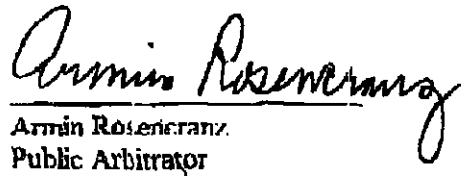
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Armin Rosencranz	-	Public Arbitrator
Mark R. Palmer	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Richard L. Rubin, Esq.  
Chair, Public Arbitrator

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Signature Date

  
Armin Rosencranz  
Public Arbitrator

5/19/04  
Signature Date

Mark R. Palmer  
Non-Public Arbitrator

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

ARBITRATION PANEL

Richard L. Rubin, Esq.	-	Public Arbitrator, Presiding Chair
Armin Rosencranz	-	Public Arbitrator
Mark R. Palmer	-	Non-Public Arbitrator


Concurring Arbitrators' Signatures

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Richard L. Rubin, Esq.  
Chair, Public Arbitrator

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Signature Date

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Armin Rosencranz  
Public Arbitrator

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

  
\_\_\_\_\_  
Mark R. Palmer  
Non-Public Arbitrator

5-20-04  
Signature Date

5/20/04  
Date of Service