

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

---

In the Matter of the Arbitration Between:

Jo An Benzel, Claimant v. Morgan Stanley DW, Inc. and David A. Sanford, Respondents

Case Number: 03-01685

Hearing Site: San Diego, California

---

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

**REPRESENTATION OF PARTIES**

For Claimant:

Franklin Geerdes, Esq.  
Geerdes & Geerdes  
Valley Center, California

For Respondent:

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

**CASE INFORMATION**

Statement of Claim filed: March 6, 2003

Amendment to Statement of Claim filed: July 11, 2003

Claimant's Uniform Submission Agreement signed: March 5, 2003

Joint Statement of Answer filed by Respondents: May 16, 2003

Respondent Morgan Stanley DW, Inc.'s Uniform Submission Agreement signed: Not Dated

Respondent David A. Sanford's Uniform Submission Agreement signed: May 16, 2003

**CASE SUMMARY**

Claimant alleged breach of fiduciary duty, suitability, misrepresentations/non-disclosures, common law fraud, negligence, and failure to supervise. Additionally, Claimant alleged Respondent Morgan Stanley DW, Inc. was responsible and liable for the acts and omissions of Respondent David A. Sanford based on the Doctrine of Respondeat Superior. The dispute involved the purchase and/or sale of unspecified technology stocks.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$100,000.00, an unspecified reasonable rate of return on the amount of the loss from after the date of January 31, 2003 to the date of the award, and interest.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety and arbitration costs. Additionally, Respondent David A. Sanford requested the Panel recommend the expungement of all references to this matter from his CRD record.

**OTHER ISSUES CONSIDERED AND DECIDED**

On March 5, 2003, Claimant and Claimant'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.

On March 27, 2003, Respondent David A. Sanford 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 14, 2003, Respondent Morgan Stanley DW, Inc.'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.

The Parties stipulated to Claimant's filing of the Amendment to the Statement of Claim.

At the hearing, after Claimant presented her case, Respondents moved the Panel for a directed verdict. After due deliberation, the Panel granted Respondents' Motion for a Directed Verdict.

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) Respondents Morgan Stanley DW, Inc. and David A. Sanford's Motion for Directed Verdict is granted.
- 2) Respondents Morgan Stanley DW, Inc. and David A. Sanford are dismissed with prejudice.
- 3) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent David A. Sanford's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent David A. Sanford must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 4) The parties shall bear their respective costs, including attorney's fees.
- 5) 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	= \$ 225.00
--------------------------	-------------

#### **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	= \$ 1,100.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 1,700.00</u>
<b>Total Member Fees</b>	<b>= \$ 3,550.00</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 @ \$750.00/session	= \$ 750.00
Pre-hearing conference: July 24, 2003 1 session	

Four (4) Hearing sessions @ \$750.00/session	= \$ 3,000.00
Hearings: January 5, 2004 2 sessions	
January 6, 2004 2 sessions	

---

<b>Total Forum Fees</b>	<b>= \$ 3,750.00</b>
-------------------------	----------------------

The Panel assessed \$3,750.00 of the forum fees to Claimant Jo An Benzel.

**Fee Summary**

1. Claimant Jo An Benzel is charged with the following fees and costs:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$ 3,750.00
Total Fees	= \$ 3,975.00
Less payments	= \$( 975.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 3,000.00</b>

2. Respondent Morgan Stanley DW, Inc. is charged with the following fees and costs:

Member Fees	= \$ 3,550.00
Less payments	= \$(6,750.00)
<b>Refund Due Morgan Stanley DW, Inc.</b>	<b>= \$(3,200.00)</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.

NASD Dispute Resolution  
Arbitration No. 03-01685  
Award Page 5 of 5

**ARBITRATION PANEL**

Guenter S. Cohn, Esq.	-	Public Arbitrator, Presiding Chair
Lou von Dyl	-	Public Arbitrator
Larry Haugaard	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Guenter S. Cohn, Esq.  
Chair, Public Arbitrator

1-11-04  
Signature Date

\_\_\_\_\_  
Lou von Dyl  
Public Arbitrator

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

\_\_\_\_\_  
Larry Haugaard  
Non-Public Arbitrator

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

01/12/04  
Date of Service

ARBITRATION PANEL

Guenter S. Cohn, Esq.

Public Arbitrator, Presiding Chair

Lou von Dyl

Public Arbitrator

Larry Haugeard

Non-Public Arbitrator

Concurring Arbitrators' Signatures

Guenter S. Cohn, Esq.  
Chair, Public Arbitrator

Signature Date

  
Lou von Dyl  
Public Arbitrator

1-10-04  
Signature Date

Larry Haugeard  
Non-Public Arbitrator

Signature Date

01/12/04  
Date of Service

ARBITRATION PANEL

Guenther S. Cohn, Esq.	-	Public Arbitrator, Presiding Chair
Lou von Dyl	-	Public Arbitrator
Larry Hauggaard	-	Non-Public Arbitrator

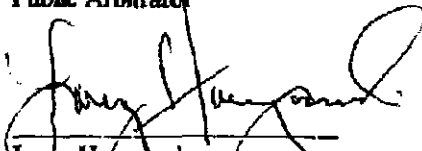
Concurring Arbitrators' Signatures

\_\_\_\_\_  
Guenther S. Cohn, Esq.  
Chair, Public Arbitrator

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

\_\_\_\_\_  
Lou von Dyl  
Public Arbitrator

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

  
\_\_\_\_\_  
Larry Hauggaard  
Non-Public Arbitrator

1-09-04  
\_\_\_\_\_  
Signature Date

01/12/09  
\_\_\_\_\_  
Date of Service