

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

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In the Matter of the Arbitration Between:

Name of the Claimants

Case Number: 03-01717

Maxine K. Bowman, Individually and as  
Personal Representative of  
The Estate of Claud A. Bowman

Name of the Respondent

Hearing Site: Charlotte, North Carolina

Morgan Stanley DW Inc.  
Paul Foster Green

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

**REPRESENTATION OF PARTIES**

Claimants Maxine K. Bowman ("Bowman"), Individually and as the Personal Representative of The Estate of Claud A. Bowman ("Estate"), hereinafter collectively referred to as "Claimants", were represented by Mitchell Willoughby, Esq., Willoughby & Hoefer, P.A., Columbia, South Carolina.

Respondent Morgan Stanley DW Inc. ("Morgan Stanley") and Paul Foster Green ("Green"), hereinafter collectively referred to as "Respondents", were represented by Jennifer L. Borum, Esq., Hunton & Williams L.L.P., Richmond, Virginia.

**CASE INFORMATION**

Statement of Claim filed on March 10, 2003.

Amended Statement of Claim filed on May 30, 2003.

Claimant Bowman, Individually and as the Personal Representative of the Estate signed the Uniform Submission Agreement on March 8, 2003.

Statement of Answer filed by Respondents on May 13, 2003.

A representative of Respondent Morgan Stanley executed the Uniform Submission Agreement on May 12, 2003.

Respondent Green signed the Uniform Submission Agreement on October 10, 2003.

**CASE SUMMARY**

Claimants asserted the following causes of action, among others: breach of contract, fraud, constructive fraud, fraudulent concealment, breach of fiduciary duty, unsuitability, negligence, gross negligence, violation of NYSE and NASD rules, failure to supervise, failure to execute instructions, violation of federal securities laws, and state securities fraud. The causes of action relate to the purchase and sale of unspecified mutual funds.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: failure to state a claim upon which relief may be granted, authorization, ratification, estoppel, failure to mitigate, any damages were the result of superseding and intervening causes, and at the time in question Respondent Morgan Stanley had adequate supervisory procedures in place.

#### RELIEF REQUESTED

Claimants in their Amended Statement of Claim requested:

Compensatory Damages	\$70,000.00-80,000.00
Punitive Damages	amount unspecified
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondents in their Statement of Answer requested that the Panel dismiss the Statement of Claim, grant Respondents the costs and expenses of this arbitration, and grant Respondents such other and further relief as is just and proper.

#### OTHER ISSUES CONSIDERED AND DECIDED

At the hearing, Claimant Bowman in her capacity of Personal Representative of the Estate withdrew with prejudice the Estate's claims in this matter.

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.

#### AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents are jointly and severally liable to and shall pay to Claimant Bowman compensatory damages of \$16,500.00;
2. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and,
3. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

### 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	= \$ 225.00
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#### Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Respondent Morgan Stanley is a party.

Member surcharge	= \$1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,700.00
Total Member Fees	= \$3,550.00

#### Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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 Panel @ \$750.00	= \$ 750.00
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Pre-hearing conference:	November 18, 2003	1 session
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Four (4) Hearing sessions @ \$750.00	= \$3,000.00
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Hearing Dates:	March 22, 2004	2 sessions
	March 23, 2004	2 sessions

Total Forum Fees	= \$3,750.00
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1. The Panel has assessed \$1,875.00 of the forum fees to Claimant Bowman.
2. The Panel has assessed \$1,875.00 of the forum fees jointly and severally to Respondents.

### EEE SUMMARY

1. Claimant Bowman is assessed and shall pay the following fees:

Forum Fees	= \$1,875.00
Total Fees	= \$1,875.00
Less payments	= \$ 750.00
Balance Due NASD Dispute Resolution	= \$1,125.00

2. Claimants are jointly and severally assessed and shall pay the following fees:

<u>Filing Fees</u>	= \$ 225.00
<u>Total Fees</u>	= \$ 225.00
<u>Less payments</u>	= \$ 225.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

3. Respondent Morgan Stanley is assessed and shall pay the following fees:

<u>Member Fees</u>	= \$3,550.00
<u>Total Fees</u>	= \$3,550.00
<u>Less payments</u>	= \$3,550.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

4. Respondents are jointly and severally assessed and shall pay the following fees:

<u>Forum Fees</u>	= \$1,875.00
<u>Total Fees</u>	= \$1,875.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$1,875.00

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

ARBITRATION PANEL

Robert S. Bernard, Esq.	-	Public Arbitrator, Presiding Chairperson
James A. Cormack	-	Public Arbitrator, Panelist
Donald James Goodwin	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures



Robert S. Bernard, Esq.

Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
James A. Cormack

Public Arbitrator, Panelist

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

\_\_\_\_\_  
Donald James Goodwin

Non-Public Arbitrator, Panelist

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

March 30 2004  
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Robert S. Bernard, Esq.  
Public Arbitrator, Presiding Chairperson

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

James A. Cormack  
James A. Cormack  
Public Arbitrator, Panelist

3.26-04  
Signature Date

\_\_\_\_\_  
Donald James Goodwin  
Non-Public Arbitrator, Panelist

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Signature Date

March 30 2004  
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Robert S. Bernard, Esq.  
Public Arbitrator, Presiding Chairperson

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James A. Connack  
Public Arbitrator, Panelist

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Non-Public Arbitrator, Panelist

  
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