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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Marcia Varney

Case Number: 03-02194

Name of the Respondent  
Morgan Stanley DW, Inc.

Hearing Site: Boca Raton, Florida

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Nature of the Dispute: Customer vs. Member Firm.

**REPRESENTATION OF PARTIES**

For Marcia Varney, hereinafter referred to as "Claimant": Adam S. Doner, Esq., Gordon & Doner, P.A., Palm Beach Gardens, Florida.

For Morgan Stanley DW, Inc., hereinafter referred to as "Respondent": Tucker H. Byrd, Esq., Greenberg Traurig, P.A., Orlando, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: March 26, 2003.

Claimant signed the Uniform Submission Agreement: March 4, 2003.

Statement of Answer filed by Respondent on or about: June 3, 2003.

Respondent signed the Uniform Submission Agreement: June 12, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: fraud; negligence; breach of fiduciary duty; misrepresentation; lack of supervision; suitability; violation of Chapter 517 of the Florida Securities Investor Protection Act; violation of Conduct Rules 2110 and 3000 of the NASD manual and NYSE Rule 405; and violation of Section 10(b)(5) of the Securities Exchange Act of 1934. The causes of action relate to purchase and sale of unspecified securities products in Claimant's account.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

**RELIEF REQUESTED**

Claimant requested compensatory damages of \$138,620.00; commissions and fees; interest; income appreciation; costs; expenses; disbursements, including reasonable attorneys' fees and expert witness fees; and for such other relief as the Panel deemed just and proper.

Respondent requested that Claimant's claims be denied in their entirety and attorneys' fees as a prevailing party under Chapter 517 of the Florida Statutes.

**OTHER ISSUES CONSIDERED AND DECIDED**

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, 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:

The Panel has considered the claims raised in the Statement of Claim including suitability, lack of supervision, fraudulent, intentional or negligent conduct, breach of fiduciary duty and claims arising pursuant to Chapter 517 of the Florida Statutes. After consideration of all of the evidence, including testimony and documents presented, the Panel has concluded that Claimant's claims should be denied.

Any and all claims for relief not specifically addressed herein, including the parties' requests for attorneys' fees, are denied.

**FEES**

Pursuant to the NASD Code of Arbitration Procedure (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
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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 firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Morgan Stanley DW, Inc. is a member firm and a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00
Total Member Fees	= \$5,200.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were incurred in this matter.

**Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

No injunctive relief fees were incurred in this matter.

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A 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. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: February 4, 2004 1 session	
One (1) Pre-hearing session with the Panel @ \$1,125.00 per session	= \$1,125.00
Pre-hearing conference: October 20, 2003 1 session	
Four (4) Hearing sessions @ \$1,125.00 per session	= \$4,500.00
Hearing Dates: February 11, 2004 2 sessions	
February 12, 2004 2 sessions	
Total Forum Fees	= \$6,075.00

The Panel has assessed forum fees of \$3,037.50 to Claimant.

The Panel has assessed forum fees of \$3,037.50 to Respondent.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred in this matter.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$3,037.50
Total Fees	= \$3,337.50
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$1,912.50

Respondent is solely liable for:

Member Fees	= \$5,200.00
Forum Fees	= \$3,037.50
Total Fees	= \$8,237.50
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$3,037.50

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

**ARBITRATION PANEL**

Howard I. Wilgoren, Esq.	-	Public Arbitrator, Presiding Chairperson
George H. Rausch, Ph.D	-	Public Arbitrator
G. Brooks Euler, Jr.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

<u>/s/</u>	<u>02/18/04</u>
Howard I. Wilgoren, Esq.	Signature Date
Public Arbitrator, Presiding Chairperson	

<u>/s/</u>	<u>02/18/04</u>
George H. Rausch, Ph.D	Signature Date
Public Arbitrator	

<u>/s/</u>	<u>02/18/04</u>
G. Brooks Euler, Jr.	Signature Date
Non-Public Arbitrator	

02/18/04  
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution  
Arbitration No. 03-02194  
Award Page 4 of 4

Respondent is solely liable for:

Member Fees	= \$5,200.00
Forum Fees	= \$3,037.50
Total Fees	= \$8,237.50
Less payments	= \$5,200.00
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George H. Ransch, Ph.D.  
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Public Arbitrator, Presiding Chairperson  
Public Arbitrator  
Non-Public Arbitrator

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Howard I. Wilgoren, Esq.  
Public Arbitrator, Presiding Chairperson

2-18-04  
Signature Date

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Public Arbitrator

Signature Date

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Non-Public Arbitrator

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NASD Dispute Resolution  
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Respondent is solely liable for:

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Total Fees	= \$8,237.50
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