

**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Name of the Claimant
Nancy R. Messham

Case Number: 03-02318

Name of the Respondent
Morgan Stanley DW, Inc.

Hearing Site: Pittsburgh, PA

Nature of the Dispute: Customer vs. Member

REPRESENTATION OF PARTIES

Claimant, Nancy R. Messham, hereinafter referred to as "Claimant", was represented by Robert Sommer, Jr., Esq., Hergenroeder, Rega and Sommer, LLC, Pittsburgh, Pennsylvania.

Respondent, Morgan Stanley DW, Inc., hereinafter referred to as "Respondent", was represented by Tucker H. Byrd, Esq., Greenberg Traurig, PA, Orlando, Florida.

CASE INFORMATION

Statement of Claim filed on April 1, 2003.

Claimant signed the Uniform Submission Agreement on March 20, 2003.

Statement of Answer filed by Respondent on or about June 16, 2003.

A representative of Respondent signed the Uniform Submission Agreement on May 30, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract, breach of fiduciary duty, and duty of care. The causes of action relate to the purchase of equity mutual funds and variable annuities.

Unless specifically admitted in its Answer, Respondent 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; waiver, estoppel and ratification; contributory negligence; and, statutes of limitations.

RELIEF REQUESTED

Claimant requested \$ 471,936.00 in compensatory damages plus interest.

Respondent requested that Claimant's Statement of Claim be denied in its entirety.

AWARD

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

1. Respondent is liable to and shall pay to Claimant the sum of twenty-one thousand eight hundred eighty-nine dollars and no cents (\$21,889.00) in compensatory damages plus six percent (6%) interest compounded annually accruing from June 1, 1998 until June 1, 2004;
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 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	= \$ 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 party.

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

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 @ \$1,125.00	= \$1,125.00
Pre-hearing conference: December 1, 2003 1 session	

Five (5) Hearing sessions @ \$1,125.00 = \$5,625.00

Hearing Dates:	June 28, 2004	2 sessions
	June 29, 2004	2 sessions
	June 30, 2004	1 session

Total Forum Fees = \$6,750.00

The Panel has assessed \$6,750.00 of the forum fees to Respondent.

Fee Summary

1. Claimant is assessed and shall pay:

Initial Filing Fee	= \$ 300.00
Total Fees	= \$ 300.00
Less payments	= \$ 1,425.00
Balance owed Claimant from NASD Dispute Resolution	= \$ 1,125.00

2. Respondent is assessed and shall pay:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 6,750.00
Total Fees	= \$11,950.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 6,750.00

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

ARBITRATION PANEL

Douglas M. Branson
Larry A. Feldman
Timothy Shay Davis

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator, Panelist
- Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures



Douglas M. Branson
Public Arbitrator, Presiding Chairperson

July 21, 2004
Signature Date

Larry A. Feldman
Public Arbitrator, Panelist

Signature Date

Timothy Shay Davis
Non-Public Arbitrator, Panelist

Signature Date

July 21, 2004
Date of Service (For NASD Dispute Resolution office use only)

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Public Arbitrator, Panelist

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Signature Date

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Non-Public Arbitrator, Panelist

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