

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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Janet C. Kelley

Case Number: 03-02630

Names of the Respondents  
Morgan Stanley DW Inc.  
Dominick P. Musso

Hearing Site: New Orleans, LA

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

**REPRESENTATION OF PARTIES**

For Janet C. Kelley ("Kelley"), hereinafter referred to as "Claimant": James F. Willeford, Esq., New Orleans, LA.

For Morgan Stanley DW Inc. ("MSDW") and Dominick P. Musso ("Musso"), hereinafter referred to as "Respondents": Mauricio S. Beugelmans, Esq., Vice President & Senior Attorney, Morgan Stanley DW Inc., San Francisco, CA.

**CASE INFORMATION**

Statement of Claim filed on or about: April 8, 2003.

Claimant signed the Uniform Submission Agreement: March 24, 2003.

Statement of Answer filed by Respondents on or about: June 23, 2004.

Respondent MSDW signed the Uniform Submission Agreement: May 13, 2003.

Respondent Musso signed the Uniform Submission Agreement: August 22, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: 1) breach of fiduciary duty; 2) churning; 3) unsuitability; 4) misrepresentations; 5) violation of the Louisiana Securities Act; 6) breach of the "know your customer" rule; 7) respondeat superior, and 8) control person liability. The causes of action relate to the purchase of stocks in Coca-Cola, Intel Corporation, Microsoft Corporation and Rite-Aid Corporation, and the purchase and sale of mutual funds in MSDW Balanced Growth C, MSDW Dividend Growth C, MSDW Information Funds C, MSDW Financial Services TRC, American Opportunities FDC, Information Fund C, Financial Services Trust C and S&P Index Fund C, Special Value Fund C and Financial Services C. The causes of action also relate to a margin loan in Claimant's account.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages of \$75,000.00, plus interest, attorney's fees, the costs of this proceeding and such other relief as is deemed just and equitable.

Respondents requested that all claims against them be dismissed and that Respondent MSDW be awarded its fees and costs associated with this proceeding. In addition, Respondents requested that all references to this matter be expunged from the NASD Central Registration Depository ("CRD") record of Respondent Musso.

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

Respondents' ore tenus Motion for Directed Award, presented at the conclusion of Claimant's presentation of evidence, was denied.

The parties have agreed that the Award in this matter may be executed in counterpart copies.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the undersigned arbitrators (the "Panel") have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are dismissed with prejudice.
2. Each party to bear their own costs.
3. The Panel recommends the expungement of all references to the above captioned arbitration from Respondent Musso's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Musso must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
4. Any and all claims for relief not specifically addressed herein, including requests for attorney's 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 = \$225.00

#### **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, MSDW is a member firm and is a party.

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

#### **Adjournment Fees**

No adjournments were granted during these proceedings for which fees were assessed.

#### **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 during these proceedings.

#### **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 the Panel @ \$750.00	= \$ 750.00
Pre-hearing conference: November 12, 2003	1 session
Four (4) Hearing sessions @ \$750.00	= \$3,000.00
Hearing Dates: April 7, 2004	3 sessions
April 8, 2004	1 session
Total Forum Fees	= \$3,750.00

The Panel has assessed \$1,875.00 of the forum fees to Claimant.

The Panel has assessed \$1,875.00 of the forum fees jointly and severally to Respondents.

#### **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 fees were incurred during these proceedings.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$1,875.00
Total Fees	= \$2,100.00
Less payments	= \$ 975.00
Balance Due NASD Dispute Resolution	= \$1,125.00

Respondent MSDW is solely liable for:

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

Respondents are jointly and severally liable for:

Forum Fees	= \$1,875.00
Total Fees	= \$1,875.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$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**

<i>Andrew Phelps Burnside, JD</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Larry A. Feldman</i>	-	<i>Public Arbitrator</i>
<i>William R. Hanlein</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
/s/  
Andrew Phelps Burnside, JD  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
/s/  
Larry A. Feldman  
Public Arbitrator

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

/s/  
William R. Hanlein  
Non-Public Arbitrator

Signature Date

April 15, 2004  
Date of Service (For NASD Dispute Resolution office use only)

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Public Arbitrator, Presiding Chairperson



Signature Date

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Public Arbitrator

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 Andrew Phelps Burnside, JD  
 Public Arbitrator, Presiding Chairperson

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Signature Date

\_\_\_\_\_  
 Larry A. Feldman  
 Public Arbitrator

4-14-04  
 \_\_\_\_\_  
 Signature Date

William R. Hanlein

William R. Hanlein  
Non-Public Arbitrator

04/14/04  
Signature Date

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