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

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In the Matter of the Arbitration Between:

Names of the Claimants

David Larkin  
Annette Larkin

Case Number: 03-02844

Names of the Respondents

Morgan Stanley DW, Inc.  
Dennis Witkowski

Hearing Site: Boca Raton, Florida

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

**REPRESENTATION OF PARTIES**

For David Larkin ("D. Larkin") and Annette Larkin ("A. Larkin"), hereinafter collectively referred to as "Claimants": Randall W. Henley, Esq., Randall W. Henley, P.A., West Palm Beach, Florida.

For Morgan Stanley DW, Inc. ("MDSW") and Dennis Witkowski ("Witkowski"), hereinafter collectively referred to as "Respondents": Jon Jacobson, Esq. and Todd Zuckerbrod, Esq., Greenberg Traurig, P.A., West Palm Beach, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: April 4, 2003.

Claimants signed the Uniform Submission Agreement: April 9, 2003.

Statement of Answer filed by Respondent MSDW on or about: July 22, 2003.

Statement of Answer filed by Respondent Witkowski on or about: September 4, 2003.

Respondent Witkowski signed the Uniform Submission Agreement: June 20, 2003.

Respondent MSDW did not submit and executed Uniform Submission Agreement.

**CASE SUMMARY**

Claimants asserted the following causes of action: 1) intentional and/or negligent misrepresentation; 2) breach of fiduciary duty; and 3) negligence. The causes of action relate to Claimants' investments in, including but not limited to, AutoNation, Inc. and other unspecified technology stocks.

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

**RELIEF REQUESTED**

Claimants requested the following: 1) compensatory damages in the amount of \$980,000.00; 2) interest; 3) costs; and 4) such other and further relief as the undersigned arbitrators (the "Panel")

deemed just and proper.

Respondent MSDW requested: 1) that the Panel dismiss the Statement of Claim in its entirety; 2) that the Panel assess all forum fees against Claimants; and 3) such other and further relief as the Panel deemed just and appropriate.

Respondent Witkowski requested: 1) that the Panel dismiss the Statement of Claim in its entirety; 2) that the Panel assess all forum fees against Claimants; and 3) such other and further relief as the Panel deemed just and appropriate.

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

Respondent MSDW did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim and appeared at the hearing, is bound by the determination of the Panel on all issues submitted.

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:

1. Respondents MSDW and Witkowski are jointly and severally liable to Claimants D. Larkin and A. Larkin on the counts of misrepresentation as to suitability of investments, breach of fiduciary duty in failure to follow Claimants' investment objectives and negligent supervision and purchase of unsuitable investments and shall pay to Claimants compensatory damages in the amount of \$206,248.00.
2. Any and all other claims for relief not specifically addressed herein are denied, with prejudice.

### **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 = \$ 375.00

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

Member surcharge = \$2,250.00  
Pre-hearing process fee = \$ 750.00

Hearing process fee	= \$4,000.00
Total Member Fees	= \$7,000.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournment fees assessed during these proceedings.

**Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

There were no three-day cancellation fees assessed during these proceedings.

**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.

There were no injunctive relief fees assessed 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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with the Panel @ \$1,200.00/session	= \$2,400.00
Pre-hearing conferences:	
October 27, 2003	1 session
June 29, 2005	1 session
Six (6) Hearing sessions @ \$1,200.00/session	= \$7,200.00
Hearing Dates:	
December 19, 2005	2 sessions
December 20, 2005	2 sessions
December 21, 2005	2 sessions
Total Forum Fees	= \$9,600.00

The Panel assessed 100% of the forum fees in an amount of \$9,600.00 to Respondents, jointly and severally.

**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**

Claimants are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 375.00
<u>Total Fees</u>	= \$ 375.00
<u>Less payments</u>	= \$ 375.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Respondent MSDW is solely liable for:

<u>Member Fees</u>	= \$7,000.00
<u>Total Fees</u>	= \$7,000.00
<u>Less payments</u>	= \$7,000.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Respondents are jointly and severally liable for:

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<u>Total Fees</u>	= \$9,600.00
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<u>Balance Due NASD Dispute Resolution</u>	= \$9,600.00

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

**ARBITRATION PANEL**

<i>John R. Camp, Jr., Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Kenneth E. Merklen, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Barry Rabinowitz, J.D.</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/s/\_\_\_\_\_  
John R. Camp, Jr., Esq.  
Public Arbitrator, Presiding Chairperson

12/23/05  
Signature Date

\_\_\_\_\_/s/\_\_\_\_\_  
Kenneth E. Merklen, Esq.  
Public Arbitrator

12/22/05  
Signature Date

\_\_\_\_\_/s/\_\_\_\_\_  
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NASD Dispute Resolution

Arbitration No. 03-02844

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12/23/05

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

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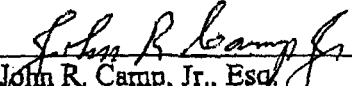
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 John R. Camp, Jr., Esq.  
 Public Arbitrator, Presiding Chairperson

23 Dec 2005  
 Signature Date

\_\_\_\_\_  
 Kenneth E. Merklen, Esq.  
 Public Arbitrator

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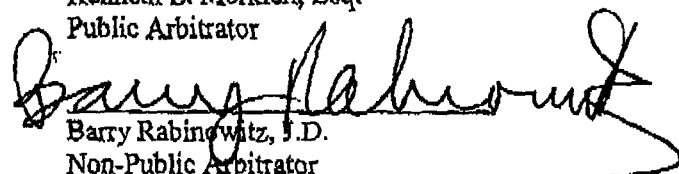
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Signature Date 12/22/05