

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

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In the Matter of the Arbitration Between:

Carolyn B. Kamps, Claimant v. Morgan Stanley DW Inc. and Ronald F. Pirello, Respondents

Case Number: 03-02869

Hearing Site: Seattle, Washington

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

**REPRESENTATION OF PARTIES**

For Claimant:

Maris Baltins, Esq.  
Winston & Cashatt  
Spokane, Washington

For Respondents:

Christopher B. Wells, Esq.  
Lane Powell Spears Lubersky, LLP  
Seattle, Washington

**CASE INFORMATION**

Statement of Claim filed: April 9, 2003

Claimant's Uniform Submission Agreement signed: April 9, 2003

Joint Statement of Answer filed by Respondents: June 10, 2003

Respondent Morgan Stanley DW Inc.'s Uniform Submission Agreement received: June 12, 2003

Respondent Ronald F. Pirello's Uniform Submission Agreement signed: June 5, 2003

**CASE SUMMARY**

Claimant alleged breach of contract, breach of fiduciary duty, unauthorized trading, churning, unsuitability, misrepresentations and omissions, and failure to supervise. Claimant's allegation involved unspecified securities in her margin account.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of

Claim.

**RELIEF REQUESTED**

Claimant requested \$200,000.00 in compensatory damages, interest at the rate of 12% per annum, and costs, including attorney's fees.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety, and costs, including attorney's fees.

**OTHER ISSUES CONSIDERED AND DECIDED**

On June 3, 2004, Claimant filed a Request to Change Venue from Seattle to Spokane, Washington. On June 4, 2004, Respondents filed an opposition thereto. After due deliberation and consideration, the Panel denied Claimant's request and ordered that the evidentiary hearing be held in Seattle, Washington, as originally ordered by the Panel on December 3, 2003.

At the beginning of the evidentiary hearing on June 22, 2004, Claimant orally requested leave to amend her pleadings to request \$184,581.59 in compensatory damages based on the Washington State Securities Act, RCW 20.21.010 et seq. and to request punitive damages in the amount of \$250,000.00. After due deliberation, the Panel granted Claimant's request.

At the conclusion of the evidentiary hearing on June 24, 2004, Respondents withdrew their request for an award of attorney's fees.

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, testimony, evidence presented at the hearing, and post-hearing submissions, the Panel 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 Claimant the sum of \$56,209.00 in compensatory damages.
- 2) Respondents are jointly and severally liable to and shall pay Claimant the sum of \$18,549.00 in attorney's fees.
- 3) Respondents are jointly and severally liable to and shall pay Claimant \$300.00 for reimbursement of the initial claim filing fee.
- 4) Claimant's claim for punitive damages is denied.
- 5) Except as provided above, the parties shall bear their respective costs, including attorney's fees.
- 6) All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 300.00
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#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Morgan Stanley DW Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 2,750.00</u>
<b>Total Member Fees</b>	<b>= \$ 5,200.00</b>

#### **Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Panel.

The following fees are assessed:

1 Pre-hearing conference session with the Panel @ \$1,125.00/session	= \$1,125.00
Pre-hearing conference: December 3, 2003 1 session	
5 Hearing sessions @ \$1,125.00/session	= \$5,625.00
Hearings: June 22, 2004 2 sessions	
June 23, 2004 2 sessions	
June 24, 2004 1 session	
<b>Total Forum Fees</b>	<b>= \$6,750.00</b>

The Panel assessed the entire balance of the forum fees, in the amount of \$6,750.00, jointly and severally to Respondents.

**Fee Summary**

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
<u>Less payments</u>	<u>= \$(1,425.00)</u>
<b>Refund Due Claimant</b>	<b>= \$(1,125.00)</b>
  
2. Respondent Morgan Stanley DW Inc. is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
<u>Less payments</u>	<u>= \$(5,200.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>
  
3. Respondents are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 6,750.00
<u>Less payments</u>	<u>= \$( 0.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 6,750.00</b>

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

**ARBITRATION PANEL**

Thomas J. Brewer	-	Public Arbitrator, Presiding Chair
Elizabeth L. Morrison	-	Public Arbitrator
Kay A. Johnson	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
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Thomas J. Brewer  
Chair, Public Arbitrator

  
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Signature Date

\_\_\_\_\_  
Elizabeth L. Morrison  
Public Arbitrator

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

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Kay A. Johnson  
Non-Public Arbitrator

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

  
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Date of Service

**ARBITRATION PANEL**

Thomas J. Brewer	-	Public Arbitrator, Presiding Chair
Elizabeth L. Morrison	-	Public Arbitrator
Kay A. Johnson	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Thomas J. Brewer  
Chair, Public Arbitrator

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Signature Date



Elizabeth L. Morrison  
Public Arbitrator

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6/26/04  
Signature Date

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Kay A. Johnson  
Non-Public Arbitrator

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Signature Date

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6/29/04  
Date of Service

ARBITRATION PANEL

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Elizabeth L. Morrison	-	Public Arbitrator
Kay A. Johnson	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

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Thomas J. Brewer  
Chair, Public Arbitrator

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Signature Date

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Elizabeth L. Morrison  
Public Arbitrator

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

  
\_\_\_\_\_  
Kay A. Johnson  
Non-Public Arbitrator

6/28/04  
Signature Date

6/29/04  
Date of Service