

**COPY**

**Stipulated Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Charles E. Dunbar and Lynda N. Dunbar, Claimants v. Morgan Stanley DW Inc. and Kirk F. Stauffer, Respondents

Case Number: 03-03603

Hearing Site: San Francisco, California

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

**REPRESENTATION OF PARTIES**

For Claimants:

Mitchell S. Ostwald, Esq.  
Law Offices of Mitchell S. Ostwald  
Sacramento, California

For Respondents:

Eric G. Wallis, Esq.  
Reed Smith LLP  
Oakland, California

**CASE INFORMATION**

Statement of Claim filed: May 15, 2003

Claimants' Joint Uniform Submission Agreement signed: May 14, 2003

Joint Statement of Answer filed by Respondents Morgan Stanley DW Inc. ("Morgan Stanley") and Kirk F. Stauffer: July 30, 2003

Respondent Morgan Stanley's Uniform Submission Agreement signed: June 16, 2003

Respondent Kirk F. Stauffer's Uniform Submission Agreement filed: July 31, 2003

**CASE SUMMARY**

Claimants alleged Respondents were liable to them for damages resulting from Claimant's investments through Respondents and caused by Respondents' acts and omissions including common law fraud, failure to supervise, negligence and breach of fiduciary duty. Claimants' claims involved investments in various securities, including but not limited to, Charter Communications, KPN, Expedia.com, UPS, Agilent, Metasolv and Cache Flow.

Respondents denied the allegations of wrongdoing and that Claimants were damaged by any act of Respondents, and alleged several affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested: An amount not less than \$736,000.00 in compensatory damages, lost opportunity cost of what the gain from \$1,068,000.00 would have been if suitably invested, disgorgement of commissions, pre- and post-judgment interest at the legal rate, punitive damages, and costs including attorneys' fees.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety.

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

On June 5, 2003, Claimants Charles E. Dunbar and Lynda N. Dunbar, and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On June 16, 2003, Respondents Morgan Stanley DW Inc. and Kirk F. Stauffer's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

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

### **STIPULATION**

Claimants have stipulated to a dismissal with prejudice of all claims in this arbitration proceeding, and have further stipulated to a recommendation by the Panel for expungement of this dispute, complaint, and/or arbitration from Respondent Kirk F. Stauffer's registration records maintained by the NASD Central Registration Depository.

### **AWARD/ORDER TO EXPUNGE CRD RECORDS**

Pursuant to the stipulation reached by the parties, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims in this case are dismissed with prejudice.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Kirk F. Stauffer's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to

Members 99-09, Respondent Kirk F. Stauffer must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

3. Each party is to bear its own costs and expenses including attorneys' fees, with Morgan Stanley to pay all forum fees incurred after January 14, 2005.
4. All other relief 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 | = \$ 375.00 |
|--------------------------|-------------|

#### **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 which gave rise to the dispute, claim, or controversy. Accordingly, the member firm Morgan Stanley is a party and the following fees are assessed:

|                            |                      |
|----------------------------|----------------------|
| Member Surcharge           | = \$ 2,250.00        |
| Pre-Hearing Process Fee    | = \$ 750.00          |
| <u>Hearing Process Fee</u> | <u>= \$ 4,000.00</u> |
| Total Member Fees          | = \$ 7,000.00        |

#### **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 Chair/Panel. The following fees are assessed:

|   |                     |
|---|---------------------|
| 1 Pre-hearing conference session with a single arbitrator @ \$ 450.00/session | = Waived            |
| Pre-hearing conference: January 17, 2005                                      | 1 session           |
| 2 Pre-hearing conference sessions with the Panel @ \$1,200.00/session         | = \$ 2,400.00       |
| Pre-hearing conferences: March 22, 2004                                       | 1 session           |
| August 9, 2005  | 1 session           |
| <hr/> Total Forum Fees  | <hr/> = \$ 2,400.00 |

1. The Panel assessed \$600.00 of the forum fees jointly and severally to Claimants Charles and Lynda Dunbar.
2. The Panel assessed \$1,200.00 of the forum fees to Respondent Morgan Stanley.
3. The Panel assessed \$600.00 of the forum fees jointly and severally to Respondents Morgan Stanley and Kirk F. Stauffer.

**Fee Summary**

1. Claimants are charged with the following fees and costs:

|                             |                      |
|-----------------------------|----------------------|
| Initial Filing Fee          | = \$ 375.00          |
| <u>Forum Fees</u>           | = \$ 600.00          |
| Total Fees                  | = \$ 975.00          |
| <u>Less payments</u>        | = \$(1,575.00)       |
| <b>Refund Due Claimants</b> | <b>= \$( 600.00)</b> |

2. Respondent Morgan Stanley is charged with the following fees and costs:

|  |                      |
|--|----------------------|
| Member Fees                                | = \$ 7,000.00        |
| <u>Forum Fees</u>                          | = \$ 1,200.00        |
| Total Fees                                 | = \$ 8,200.00        |
| <u>Less payments</u>                       | = \$( 7,000.00)      |
| <b>Balance Due NASD Dispute Resolution</b> | <b>= \$ 1,200.00</b> |

3. Respondents Morgan Stanley and Kirk F. Stauffer are charged jointly and severally with the following fees and costs:

|  |                    |
|--|--------------------|
| Forum Fees                                 | = \$ 600.00        |
| <u>Less payments</u>                       | = \$( 0.00)        |
| <b>Balance Due NASD Dispute Resolution</b> | <b>= \$ 600.00</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.

**Parties' Signatures**

Dated: September 6, 2005

Eric G. Wallis  
Eric G. Wallis  
REED SMITH LLP  
Attorneys for Respondents

Dated: \_\_\_\_\_

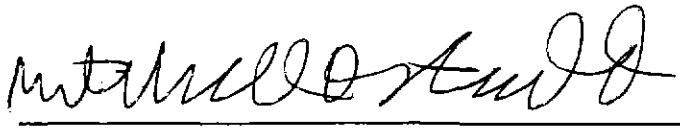
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Mitchell S. Ostwald  
LAW OFFICES OF MITCHELL S. OSTWALD  
Attorneys for Claimants

**Parties' Signatures**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Eric G. Wallis  
REED SMITH LLP  
Attorneys for Respondents

Dated: 10-7-05

\_\_\_\_\_  
  
Mitchell S. Ostwald  
LAW OFFICES OF MITCHELL S. OSTWALD  
Attorneys for Claimants

**ARBITRATION PANEL**

|                       |   |                                    |
|-----------------------|---|------------------------------------|
| Robert M. Lubin, Esq. | - | Public Arbitrator, Presiding Chair |
| Joseph A. Lasky       | - | Public Arbitrator                  |
| Mark Aaron Jones      | - | Non-Public Arbitrator              |

**Concurring Arbitrators' Signatures**



Robert M. Lubin, Esq.  
Chair, Public Arbitrator

OCT 31, 2005  
Signature Date

\_\_\_\_\_  
Joseph A. Lasky  
Public Arbitrator

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

\_\_\_\_\_  
Mark Aaron Jones  
Non-Public Arbitrator

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

11/17/05  
Date of Service

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Robert M. Lubin, Esq.  
Chair, Public Arbitrator

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

  
Joseph A. Lasky  
Public Arbitrator

11/3/05  
Signature Date

Mark Aaron Jones  
Non-Public Arbitrator

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

11/17/05  
Date of Service



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Signature Date

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Public Arbitrator

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

  
\_\_\_\_\_  
Mark Aaron Jones  
Non-Public Arbitrator

10/31/05  
\_\_\_\_\_  
Signature Date

11/17/05  
\_\_\_\_\_  
Date of Service