

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

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In the Matter of the Arbitration Between:

A. James Leeds and June Ruth Leeds aka Ruth R. Leeds, Claimants v. Morgan Stanley DW Inc., Prudential Equity Group, LLC, Dominic Prosi, Rad Brdar, and Anthony J. Maude, Respondents

Case Number: 03-03954

Hearing Site: Los Angeles, California

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Nature of the Dispute: Customers v. Members and Associated Persons

**REPRESENTATION OF PARTIES**

For Claimants:

A. James Leeds, Esq.  
Northridge, California

For Respondents Morgan Stanley DW Inc.,  
Rad Brdar, and Anthony J. Maude:

C. Robert Boldt, Esq.  
Jane J. Park, Esq.  
Kirkland & Ellis LLP  
Los Angeles, California

For Respondents Prudential Equity Group, LLC  
and Dominic Prosi:

Christopher N. Lewis, Esq.  
Simon P. Levine, Esq.  
Duane Morris, LLP  
New York, New York

Lina M. Brenner, Esq.  
Duane Morris, LLP  
San Francisco, California

**CASE INFORMATION**

Statement of Claim filed: May 30, 2003

Claimants' Joint Uniform Submission Agreement signed: November 1, 2002

Statement of Answer filed by Respondent Morgan Stanley DW Inc.: August 15, 2003

Statement of Answer by Respondent Rad Brdar dated: July 10, 2003

Statement of Answer by Respondent Anthony J. Maude dated: July 10, 2003

Joint Statement of Answer filed by Respondents Prudential Equity Group, LLC and Dominic Prosi: September 4, 2003

Respondent Morgan Stanley DW Inc.'s Uniform Submission Agreement signed: August 15, 2003

Respondent Anthony J. Maude's Uniform Submission Agreement signed: January 24, 2005

Respondent Rad Brdar's Uniform Submission Agreement signed: January 5, 2005

### **CASE SUMMARY**

Claimants alleged unsuitability, intentional and negligent misrepresentations, breach of fiduciary duty, breach of the implied covenant of good faith and fair dealing, breach of contract, violation of the Securities Exchange Act, and violation of NYSE and NASD rules. Claimants' claims involved variable annuities from Sun Money, annuity contracts with Cigna, Hartford/Putnam, and Dreyfus, and two Hartford Select Leaders Annuity contracts.

In their Statements of Answers, Respondents Morgan Stanley DW Inc., Anthony J. Maude, and Rad Brdar denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim.

Respondents Prudential Equity Group, LLC and Dominic Prosi denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim.

### **RELIEF REQUESTED**

Claimants requested \$500,000.00 in compensatory damages, unspecified interest, the return of all commissions and margin interest, and costs, including attorney's fees.

Respondent Morgan Stanley DW Inc. requested dismissal of the Claimants' Statement of Claim in its entirety, costs and fees.

Respondents Prudential Equity Group, LLC and Dominic Prosi requested dismissal of the Claimants' Statement of Claim in its entirety.

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

Respondents Prudential Equity Group, LLC and Dominic Prosi did not file with the NASD Dispute Resolution properly executed submission agreements but are required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

On January 3, 2004, Claimants and Claimants' representative 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 October 26, 2004, Claimants 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.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimants shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

On January 17, 2005, Respondents Morgan Stanley DW Inc., Anthony J. Maude, and Rad Brdar filed a Motion to Disqualify Bruce R. Safran as Counsel. On January 22, 2005, Claimants filed a notice that they would represent themselves and would retain Bruce Safran as a consultant and expert on their behalf. Claimants also requested that Respondents' motion be taken off calendar. On January 24, 2005, Respondents Morgan Stanley DW Inc., Anthony J. Maude, and Rad Brdar filed a request that the Motion to Disqualify Bruce Safran remain on calendar. On January 25, 2005, Respondents Prudential Equity Group, LLC and Dominic Prosi filed a Renewed Motion to Disqualify Bruce R. Safran. On January 28, 2005, the Panel and parties held a telephonic pre-hearing conference regarding Respondents' Motions to Disqualify. On January 28, 2005, Claimant A. James Leeds submitted a letter informing NASD that he would represent Claimants in this arbitration, and that Bruce Safran may be required as an expert only. On February 9, 2005, Respondents Morgan Stanley DW Inc., Anthony J. Maude, and Rad Brdar withdrew their objections to Bruce Safran serving as an expert pursuant to a declaration executed by Bruce Safran.

On June 10, 2005, at the conclusion of Claimants' presentation of evidence, each Respondent verbally brought a separate motion to dismiss Claimants' Statement of Claim. Respondents Dominic Prosi, Rad Brdar, and Anthony J. Maude also brought a motion to expunge all reference of this arbitration from their registration records maintained by the NASD Central Registration Depository ("CRD"). Claimants opposed the motions to dismiss and requests for expungement. After due deliberation, the Panel granted the motions to dismiss and Respondents Dominic Prosi, Rad Brdar, and Anthony J. Maude's request for expungement.

On June 10, 2005, Respondents Morgan Stanley DW Inc., Rad Brdar, and Anthony J. Maude brought a verbal motion for attorney's fees. Claimants opposed the motion. No evidence was presented as to the amount requested for attorney's fees. After due deliberation, the Panel denied Respondents' motion for 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, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimants' claims are denied in their entirety.
- 2) The Panel finds that Claimants' claims are frivolous, and thus finds that Claimants are jointly and severally liable to and shall pay Respondent Morgan Stanley DW Inc. the sum of \$3,500.00 as reimbursement for member fees.
- 3) The Panel finds that Claimants' claims are frivolous, and thus finds that Claimants are jointly and severally liable to and shall pay Respondent Prudential Equity Group, LLC the sum of \$3,500.00 as reimbursement for member fees.
- 4) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Dominic Prosi's registration records maintained by CRD, with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Dominic Prosi must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 5) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Rad Brdar's registration records maintained by CRD, with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Rad Brdar must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 6) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Anthony J. Maude's registration records maintained by CRD, with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Anthony J. Maude must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 7) Except as awarded above, the parties shall bear their respective costs, including attorney's fees.

8) 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>

The member firm Prudential Equity Group, LLC 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:

3 Pre-hearing conference sessions with the Panel @ \$1,125.00/session	= \$ 3,375.00
Pre-hearing conferences:	
January 11, 2005	1 session
January 28, 2005	1 session
February 25, 2005	1 session

3 Hearing sessions @ \$1,125.00/session	= \$ 3,375.00
Hearings:	
June 9, 2005	2 sessions
June 10, 2005	1 session

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<b>Total Forum Fees</b>	<b>= \$ 6,750.00</b>
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The Panel assessed \$6,750.00 of the forum fees jointly and severally to Claimants.

**Administrative Costs**

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and sundry other requests.

Respondent Morgan Stanley DW Inc. requested  
546 photocopies @ \$0.50 each: =\$ 273.00

**Fee Summary**

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

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$ 6,750.00</u>
Total Fees	= \$ 7,050.00
<u>Less payments</u>	<u>= \$(1,450.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 5,600.00</b>

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

Member Fees	= \$ 5,200.00
<u>Administrative Costs</u>	<u>= \$ 273.00</u>
Total Fees	= \$ 5,473.00
<u>Less payments</u>	<u>= \$(5,200.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 273.00</b>

3. Respondent Prudential Equity Group, LLC 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>

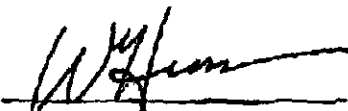
All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

William W. Huss  
Michael D. Harrison  
Mary K. Foust

- Public Arbitrator, Presiding Chair  
- Public Arbitrator  
- Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
William W. Huss  
Chair, Public Arbitrator

June 23, 2005  
\_\_\_\_\_  
Signature Date

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Michael D. Harrison  
Public Arbitrator

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

\_\_\_\_\_  
Mary K. Foust  
Non-Public Arbitrator

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

6/23/05  
\_\_\_\_\_  
Date of Service


**ARBITRATION PANEL**

William W. Huss	-	Public Arbitrator, Presiding Chair
Michael D. Harrison	-	Public Arbitrator
Mary K. Foust	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
William W. Huss  
Chair, Public Arbitrator

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

\_\_\_\_\_  
  
Michael D. Harrison  
Public Arbitrator

\_\_\_\_\_  
4/22/05  
Signature Date

\_\_\_\_\_  
Mary K. Foust  
Non-Public Arbitrator

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

\_\_\_\_\_  
6/23/05  
Date of Service



**ARBITRATION PANEL**

William W. Huss	-	Public Arbitrator, Presiding Chair
Michael D. Harrison	-	Public Arbitrator
Mary K. Foust	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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William W. Huss  
Chair, Public Arbitrator

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Signature Date

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Michael D. Harrison  
Public Arbitrator

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Signature Date

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*Mary K. Foust*  
Mary K. Foust  
Non-Public Arbitrator

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*6-14-05*  
Signature Date

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*6/23/05*  
Date of Service