

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

---

In the Matter of the Arbitration Between:

John K. Wright and Carol A. Wright, Claimants v. Mark H. Workman and Morgan Stanley DW Inc., Respondents

Case Number: 03-05723

Hearing Site: Portland, Oregon

---

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

**REPRESENTATION OF PARTIES**

For Claimants:

Jeffrey S. Salisbury, Esq.  
Law Office of Jeffrey S. Salisbury  
Eugene, Oregon

For Respondents:

Helene Jepson, Esq.  
Morgan Stanley DW Inc.  
San Francisco, California

**CASE INFORMATION**

Statement of Claim filed: July 30, 2003

Claimants' Joint Uniform Submission Agreement signed: July 28, 2003

Joint Statement of Answer filed by Respondents: September 25, 2003

Respondent Mark H. Workman's Uniform Submission Agreement signed: September 16, 2003

Respondent Morgan Stanley DW Inc.'s Uniform Submission Agreement signed:  
September 25, 2003

**CASE SUMMARY**

In their Statement of Claim, Claimants alleged violation of Oregon Securities Law §59.115 and §59.135, negligence, breach of fiduciary duty, fraud and negligent misrepresentation involving the purchase of the following securities: American Power Conversion, Andover Bancorp Inc., Bio Tech Generators, Intel Corp., Merck & Co., Northpoint Communications, Plum Creek Timber Co., Quest Communications, Roslyn Bancorp and Santa Cruz/Tarantella.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the sum of \$97,000.00, interest at a rate of 9% per annum, attorney's fees pursuant to the Oregon Securities Act, and costs, including expert witness fees.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety, expungement of all reference to the above captioned arbitration from Respondent Mark H. Workman's registration records maintained by the NASD Central Registration Depository ("CRD"), and costs.

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

At the hearing, the Panel denied Claimants' Motion to Strike Portions of Respondents' Witness List and granted Respondents' request to allow two witnesses to testify by telephone.

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) The Panel unanimously finds that Claimants were customers of Respondents Morgan Stanley DW Inc. and its Senior Vice President, Mark H. Workman. The Panel also finds that Claimants were unsophisticated investors with their primary objectives being income and safety, and growth as a secondary objective.
- 2) Respondents Morgan Stanley DW Inc. and Mark H. Workman were negligent in failing to advise the Claimants of the volatility and risks of certain recommended securities that were not consistent with their goals or suitable for them and their accounts. As a consequence of that negligence, Claimants suffered damages in the sum of \$59,787.00. Accordingly, Respondents are jointly and severally liable to and shall pay to the Claimants the sum of \$59,787.00 in compensatory damages.
- 3) Respondents are jointly and severally liable to and shall pay Claimants the sum of \$2,101.36 in costs.
- 4) The Panel finds that Respondents Morgan Stanley DW Inc. and Mark H. Workman did not act with malice and fraudulent intent and therefore all claims for punitive damages are denied.
- 5) All claims for attorney's fees are denied.
- 6) All claims for interest are denied.
- 7) Except as noted above, the parties shall bear their respective costs and 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	= \$ 225.00
--------------------------	-------------

#### **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 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	= \$1,100.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$1,700.00</u>
<b>Total Member Fees</b>	<b>= \$3,550.00</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/Chair. The following fees are assessed:

(1) Pre-hearing conference session with the Panel @ \$ 750.00/session	= \$ 750.00
Pre-hearing conference: December 16, 2003	1 session

(6) Hearing sessions @ \$750.00/session	= \$ 4,500.00
Hearings: April 1, 2004	2 sessions
April 2, 2004	3 sessions
April 8, 2004	1 session

---

<b>Total Forum Fees</b>	<b>= \$5,250.00</b>
-------------------------	---------------------

1. The Panel assessed \$5,250.00 of the forum fees jointly and severally to Respondents Mark H. Workman and Morgan Stanley DW Inc.

**Fee Summary**

1. Claimants John K. Wright And Carol A. Wright are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 225.00
<u>Less payments</u>	= \$( 975.00)
<b>Refund Due Claimants</b>	<b>= \$ ( 750.00)</b>

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

Member Fees	= \$ 3,550.00
<u>Less payments</u>	= \$(3,550.00)
<b>Balance Due NASD Dispute Resolution.</b>	<b>= \$ 0.00</b>

3. Respondents Morgan Stanley DW Inc. and Mark H. Workman are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 5,250.00
<u>Less Payments by Morgan Stanley DW Inc.</u>	= \$ (500.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 4,750.00</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**

William P. Bergsten, Esq.	-	Public Arbitrator, Presiding Chair
G. E. Craig Doupe, Esq.	-	Public Arbitrator
Joseph W. Check	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

---

William P. Bergsten, Esq.  
Chair, Public Arbitrator

---

Signature Date



---

G. E. Craig Doupe, Esq.  
Public Arbitrator

---

April 22, 2004  
Signature Date

---

Joseph W. Check  
Non-Public Arbitrator

---

Signature Date

---

April 22, 2004  
Date of Service

**ARBITRATION PANEL**

William P. Bergsten, Esq.	-	Public Arbitrator, Presiding Chair
G. E. Craig Doupe, Esq.	-	Public Arbitrator
Joseph W. Cheek	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

---

William P. Bergsten, Esq.  
Chair, Public Arbitrator

---

Signature Date

---

G. E. Craig Doupe, Esq.  
Public Arbitrator

---

Signature Date

---

*Joseph W. Cheek*  
Joseph W. Cheek  
Non-Public Arbitrator

---

*April 22, 2004*  
Signature Date


---

*April 22, 2004*  
Date of Service

ARBITRATION PANEL

William P. Bergsten, Esq.	-	Public Arbitrator, Presiding Chair
G. E. Craig Doupe, Esq.	-	Public Arbitrator
Joseph W. Cheek	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

  
William P. Bergsten, Esq.  
Chair, Public Arbitrator

4-23-04  
Signature Date

\_\_\_\_\_  
G. E. Craig Doupe, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Joseph W. Cheek  
Non-Public Arbitrator

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

April 26, 2004  
Date of Service