

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

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In the Matter of the Arbitration Between:

Maxine A. Lehn, individually and as Trustee for the Maxine A. Lehn Trust, Claimants v. Morgan Stanley DW Inc., Stephen A. Winslow and Frances M. Williams, Respondents

Case Number: 03-05938

Hearing Site: Seattle, Washington

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

**REPRESENTATION OF PARTIES**

For Claimants:

Keith D. Petrak, Esq.  
Byrnes & Keller, LLP  
Seattle, Washington

For Respondents:

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

**CASE INFORMATION**

Statement of Claim filed: August 13, 2003

Claimants' Joint Uniform Submission Agreement signed: August 6, 2003

Joint Statement of Answer filed by Respondents Morgan Stanley DW Inc., Stephen A. Winslow and Frances M. Williams: November 26, 2003

Respondent Morgan Stanley DW, Inc.'s Uniform Submission Agreement signed:  
November 10, 2003

Respondent Stephen A. Winslow's Uniform Submission Agreement signed: October 24, 2003

Respondent Frances M. Williams' Uniform Submission Agreement signed: October 23, 2003

**CASE SUMMARY**

Claimants alleged negligence, breach of fiduciary duty, misrepresentations, breach of contract, violation of the Securities Act of Washington, violation of the Securities Act of 1933 and the Securities and Exchange Act of 1934, and violation of Washington's Consumer Protection Act.

Claimants' allegations involved Morgan Stanley DW, Inc.'s proprietary class "B" mutual funds such as MSDW American Opportunities Fund B and MSDW Dividend Growth Securities Fund B.

Respondents denied the allegations of wrongdoing set forth in Claimants' Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested not less than \$500,000.00 in actual damages, rescissory damages, unspecified punitive damages, pre-judgment interest, and costs, including attorney's fees.

Respondents requested dismissal of Claimants' Statement of Claim in its entirety, expungement of this matter from Respondents Stephen A. Winslow and Frances M. Williams' CRD records, assessment of all forum fees against Claimants, and costs, including attorney's fees.

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

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

### **AWARD**

After considering the pleadings and the Parties' request for this Stipulated Award, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. All claims are dismissed with prejudice.
2. The Panel recommends the expungement of all references to the above captioned arbitration from Respondents Stephen A. Winslow's and Frances M. Williams' registration records maintained by NASD's Central Registration Depository ("CRD") be expunged, with the understanding that pursuant to NASD Notice 99-09, Respondents Stephen A. Winslow and Frances M. Williams must obtain confirmation from a court of competent jurisdiction before CRD will execute the directive to expunge.
3. Morgan Stanley DW, Inc. shall bear any forum fees charged for entry of the Stipulated Award precedent to a court order to expunge, and any other forum fees presently outstanding or that may be assessed with respect to this arbitration proceeding.
4. Except as stated in paragraph 3, the parties shall bear their respective costs, including attorney's fees.

5. All other relief requested and not expressly granted is denied.

### **FEEES**

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, which 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:

Two (2) pre-hearing conference sessions with the Panel @ \$1,125.00/session	= \$ 2,250.00
Pre-hearing conferences: February 26, 2004	1 session
May 28, 2004	1 session
<b>Total Forum Fees</b>	<b>= \$ 2,250.00</b>

1. The Panel assessed \$562.50 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$562.50 of the forum fees jointly and severally to Respondents.
3. \$1,125.00 in forum fees for the May 28, 2004 pre-hearing conference was waived.

**Fee Summary**

1. Claimants Maxine A. Lehn and the Maxine A. Lehn Trust are charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 562.50
Total Fees	= \$ 862.50
<u>Less payments</u>	<u>= \$(1,575.00)</u>
<b>Refund Due Claimant</b>	<b>= \$ (712.50)</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 Morgan Stanley DW, Inc., Stephen A. Winslow and Frances M. Williams are charged jointly and severally with the following fees and costs:

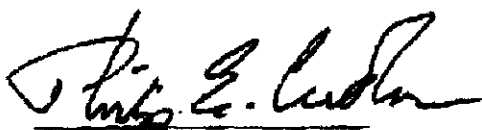
Forum Fees	= \$ 562.50
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 562.50</b>

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**

Philip E. Cutler	-	Public Arbitrator, Presiding Chair
Larry J. King	-	Public Arbitrator
Judith A. Cochrane	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Philip E. Cutler  
Chair, Public Arbitrator

10/7/2004  
Signature Date

\_\_\_\_\_  
Larry J. King  
Public Arbitrator

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

\_\_\_\_\_  
Judith A. Cochrane  
Non-Public Arbitrator

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

10/12/04  
Date of Service

**ARBITRATION PANEL**

Philip E. Cutler	-	Public Arbitrator, Presiding Chair
Larry J. King	-	Public Arbitrator
Judith A. Cochrane	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Philip E. Cutler  
Chair, Public Arbitrator

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Signature Date

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Larry J. King  
Public Arbitrator

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5/20/04  
Signature Date

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Judith A. Cochrane  
Non-Public Arbitrator

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

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10/22/04  
Date of Service

**ARBITRATION PANEL**

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Larry J. King	-	Public Arbitrator
Judith A. Cochrane	-	Non-Public Arbitrator

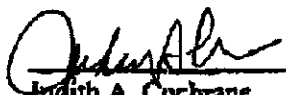
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Philip E. Cutler  
Chair, Public Arbitrator

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Signature Date

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Larry J. King  
Public Arbitrator

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Signature Date

  
\_\_\_\_\_  
Judith A. Cochrane  
Non-Public Arbitrator

10/5/04  
\_\_\_\_\_  
Signature Date

10/12/04  
\_\_\_\_\_  
Date of Service