

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

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In the Matter of the Arbitration Between:

Name of the Claimant

Larry and Sharon Alderson

Case Number: 03-05952

Name of the Respondents

Morgan Stanley DW, Inc. and  
Stifel, Nicolaus & Co., Inc.

Hearing Site: St. Louis, Missouri

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**NATURE OF DISPUTE**

Customers vs. Member Firms

**REPRESENTATION OF PARTIES**

Steven W. Koslovsky of the Law Offices of Steven Koslovsky, LLC located in Maryland Heights, Missouri, represented Claimants, Larry and Sharon Alderson, hereinafter referred to as "Claimants."

Christine Kendrick, Esq. of Morgan Stanley DW, Inc. located in San Francisco, California, represented the Respondent, Morgan Stanley DW Inc. ("Morgan Stanley").

Sherri C. Strand, Esq. of the law firm Thompson Coburn, located in St. Louis, Missouri, represented the Respondent, Stifel, Nicolaus & Co., Inc. ("Stifel Nicolaus").

**CASE INFORMATION**

Statement of Claim filed on or about August 18, 2003. Claimants, Larry and Sharon Alderson, jointly signed the Uniform Submission Agreement on August 1, 2003.

Statement of Answer filed by Respondent, Morgan Stanley DW, Inc. on or about October 24, 2003. Respondent, Morgan Stanley DW, Inc. signed the Uniform Submission Agreement on October 23, 2003.

Statement of Answer filed by Respondent, Stifel, Nicolaus & Co., Inc. on or about October 10, 2003. Respondent, Stifel, Nicolaus & Co., Inc. signed the Uniform Submission Agreement on August 28, 2003.

### CASE SUMMARY

Claimant asserted the following causes of action: negligence, suitability, breach of fiduciary duty and failure to supervise. The causes of action relate to investments made in various high technology stocks. Claimants asserted that these stocks were speculative, high-risk and unsuitable to Claimants' investment needs and objectives in light of Claimants' mandatory early retirement distribution under IRC §72t.

Unless specifically admitted in its Answer, Respondent, Morgan Stanley, denied the allegations made in the Statement of Claim and asserted the following defenses:

1. The Statement of Claim and the claims alleged therein do not state facts sufficient to constitute a claim for relief.
2. The claims for fraud and misrepresentation fail as a matter of law because Claimants have not alleged such claims with the particularity required by the applicable state laws.
3. Claimants are not entitled to the recovery sought based on the doctrine of ratification.
4. Claimants are barred by the doctrine of estoppel from the recovery sought in the Statement of Claim.
5. Claimants are barred by the doctrine of waiver from the recovery sought in the Statement of Claim.
6. Each claim alleged in the Statement of Claim is barred by the principles of equity.
7. Each claim alleged in the Statement of Claim is barred by the doctrine of laches.
8. Each claim alleged in the Statement of Claim is barred by the applicable statutes of limitations.
9. Claimants knowingly and voluntarily assumed the risks of the investments, events and matters alleged, and any losses or damages incurred by Claimants was the proximate result of the risks, which Claimants knowingly assumed.
10. By the exercise of reasonable efforts, Claimants could have mitigated their alleged damages and therefore should be barred from recovering to the extent that they failed to do so.

Unless specifically admitted in its Answer, Respondent, Stifel, Nicolaus & Co., Inc., denied the allegations made in the Statement of Claim and asserted the following defenses:

1. The Aldersons fail to state any claim upon which relief can be granted.
2. The damages for which the Aldersons seek to hold Stifel responsible resulted from their own acts or omissions.
3. Before pursuing the financial transactions at issue, the Aldersons knew the risks associated with them. Therefore, their claims are barred by the doctrines of waiver, estoppel, ratification, and assumption of risk.
4. The claims alleged are barred by the Claimants' own negligence.
5. The alleged conduct was not the proximate cause of any of the Alderson's losses, or damages, if any.
6. Alternatively, the Aldersons failed to reasonably mitigate their damages.

### **RELIEF REQUESTED**

**Claimants requested:**

Compensatory Damages	\$1,000,000.00
Punitive Damages	\$2,500,000.00
Interest	unspecified
Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief if any:	unspecified

Respondent, Morgan Stanley, requested that Claimants take nothing by reason of the Statement of Claim; that Claimants be required to pay all costs incurred in the proceedings; and for such other and further relief as the Panel deems appropriate.

Respondent, Stifel Nicolaus, requested that the Panel dismiss and deny Aldersons' claims in their entirety, and award Stifel Nicolaus its costs, expenses and attorneys' fees incurred in defending this matter.

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

On May 13, 2004, Claimants settled their dispute with Respondent, Morgan Stanley DW, Inc.

The Panel allowed parties to submit post-hearing briefs. In their post-hearing brief, Claimants withdrew their claims for attorney's fees under the Missouri Securities Act as stated in their Statement of Claim. Claimants requested sanctions and attorneys fees for concealment of discoverable documents against Respondent Stifel Nicolaus. After post-hearing deliberation was conducted, the Panel denied Claimants' motion for sanctions and attorneys 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, the testimony and evidence presented at the hearing, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Stifel, Nicolaus & Co., Inc., is solely liable for and shall pay to Claimants, Larry and Sharon Alderson, the sum of \$25,000.00 as compensatory damages.
2. Parties shall bear their own costs, including attorneys' fees, except as specified herein.
3. Any and all relief not specifically addressed herein, including punitive damages, is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee = \$ 600.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Morgan Stanley DW, Inc. and Stifel, Nicolaus & Co., Inc. are parties to these proceedings:

##### **Morgan Stanley DW, Inc.**

Member surcharge = \$2,800.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$5,000.00

##### **Stifel, Nicolaus & Co., Inc.**

Member surcharge = \$2,800.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$5,000.00

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

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$450.00 = \$ 450.00  
Pre-hearing conference: March 22, 2004 1 session

One (1) Pre-hearing session with Panel @ \$1,200.00 = \$1,200.00  
Pre-hearing conference: February 3, 2004 1 session

Five (5) Hearing sessions @ \$1,200.00 = \$6,000.00  
Hearing Dates: May 18, 2004 2 sessions  
May 19, 2004 3 sessions

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Total Forum Fees = \$7,650.00

1. The Panel has assessed 50% of the total forum fees in the amount of \$3,825.00 jointly to Claimants, Larry and Sharon Alderson.
2. The Panel has assessed 50% of the total forum fees in the amount of \$3,825.00 solely to Respondent, Stifel, Nicolaus & Co., Inc.

**Fee Summary**

1. Claimants, Larry and Sharon Alderson, are jointly liable for:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$3,825.00
Total Fees	= \$4,425.00
Less payments	= \$1,700.00
Balance Due NASD Dispute Resolution	= \$2,725.00
  
2. Respondent, Morgan Stanley DW, Inc., is solely liable for:

Member Fees	= \$5,750.00
Less payments	= \$5,750.00
Balance Due NASD Dispute Resolution	= \$ 0.00
  
3. Respondent, Stifel, Nicolaus & Co., Inc., is solely liable for:

Member Fees	= \$5,750.00
Forum Fees	= \$3,825.00
Total Fees	= \$9,575.00
Less payments	= \$5,000.00
Balance Due NASD Dispute Resolution	= \$4,575.00

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

**ARBITRATION PANEL**

Richard L. Pearce	-	Public Arbitrator, Presiding Chairperson
David B. Lacks, J.D.	-	Public Arbitrator
Dale W. Roth	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Richard L. Pearce  
Public Arbitrator, Presiding Chairperson

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6/10/04  
Signature Date

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David B. Lacks, J.D.  
Public Arbitrator

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6/10/04  
Signature Date

\_\_\_\_\_  
Dale W. Roth  
Non-Public Arbitrator

\_\_\_\_\_  
6/18/04  
Signature Date


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6/10/04  
Date of Service (For NASD Dispute Resolution office use only)

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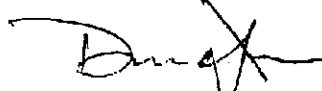
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