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

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In the Matter of the Arbitration Between:

Names of the Claimants

William Booth  
Pamela Booth

Case Number: 03-06179

Names of the Respondents

John Randolph Gunnip  
Kevin Scott Gunnip  
Morgan Stanley DW Inc.

Hearing Site: Boca Raton, Florida

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Nature of the Dispute: Customer vs. Member and Associated Person.

**REPRESENTATION OF PARTIES**

For William Booth and Pamela Booth, hereinafter collectively referred to as "Claimants": Ira A. Turret, Esq., Guararra & Zaitz, New York, New York.

For John Randolph Gunnip ("J. Gunnip"), Kevin Scott Gunnip ("K. Gunnip") and Morgan Stanley DW Inc. ("MSDW"), hereinafter collectively referred to as "Respondents": Michael J. Stanley, Esq., Beirne, Maynard & Parsons, L.L.P., Houston, Texas.

**CASE INFORMATION**

Statement of Claim filed on or about: August 25, 2003.

Claimants signed the Uniform Submission Agreement: August 21, 2003.

Statement of Answer filed by Respondents on or about: November 18, 2003.

Respondent J. Gunnip signed the Uniform Submission Agreement: December 3, 2003.

Respondent K. Gunnip signed the Uniform Submission Agreement: December 3, 2003.

Respondent MSDW signed the Uniform Submission Agreement: November 26, 2003.

Motion to Transfer Venue filed by Respondents on or about: October 8, 2003.

Response to Motion to Transfer Venue filed by Claimants on or about: October 10, 2003.

**CASE SUMMARY**

Claimants asserted the following causes of action: 1) breach of contract; 2) negligence; 3) breach of fiduciary duty; 4) misrepresentations/non-disclosures; 5) omissions; and, 6) suitability. The causes of action relate to the purchase and sale of various mutual funds in Claimants' account, including, but not limited to, Salomon Bros. Asset Mgmt., NWQ Investment Mgmt., Palley-Needleman Asset Mgmt., Regent Investor, Lazard Freres Asset Mgmt., Brandes Investment Partners and Pacific Income Advisors.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$600,000.00, punitive damages in the amount of \$1,000,000.00, attorney's fees, costs and disbursements and such other and further relief as the Panel deemed just and reasonable.

Respondents requested that the Statement of Claim be dismissed in its entirety, with prejudice, that the Panel enter an order expunging this matter from the NASD Central Registration Depository (the "CRD") records of Respondents J. Gunnip and K. Gunnip and an award of any further relief the Panel deemed just.

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

Respondents' Motion to Transfer Venue was submitted to NASD Dispute Resolution prior to the appointment of a Panel in this matter. The Director of Arbitration made a preliminary decision to deny Respondents' motion. However, the parties were advised that this motion may be presented to the Panel, once appointed, for a determination. Respondents did not renew their motion with the Panel.

The parties have agreed that the Award in this matter may be entered in counterpart copies or that a signed handwritten Award may be entered.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondents MSDW and J. Gunnip are found jointly and severally liable for negligence in that they failed to adequately communicate and failed to provide requisite professional investment management and shall pay to Claimants compensatory damages in the amount of \$35,000.00.

The Panel finds Respondent K. Gunnip not liable and recommends the expungement of all references to the above captioned arbitration from Respondent K. Gunnip's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent K. Gunnip must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Any and all claims for relief not specifically addressed herein, including Claimants' requests for attorney's fees and punitive damages, are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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 = \$ 500.00

**Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Respondent MSDW is a party to this dispute and was a member of NASD at the time the following fees were assessed:

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

**Adjournment Fees**

No requests for adjournments were filed in this matter.

**Injunctive Relief Fees**

No injunctive relief fees were incurred during this proceeding.

**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:

Two (2) Pre-hearing sessions with the Panel @ \$1,200.00	= \$2,400.00
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Pre-hearing conferences:	January 21, 2004	1 session
	March 1, 2004	1 session

Five (5) Hearing sessions with the Panel @ \$1,200.00	= \$6,000.00
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Hearing Dates:	May 18, 2004	2 sessions
	May 19, 2004	2 sessions
	May 20, 2004	1 session

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Total Forum Fees	= \$8,400.00
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The Panel has assessed \$4,200.00 of the forum fees jointly and severally to Claimants.

The Panel has assessed \$4,200.00 of the forum fees jointly and severally to Respondents MSDW and J. Gunnip.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during this proceeding.

**Fee Summary**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 4,200.00
Total Fees	= \$ 4,700.00
Less payments	= \$ 1,700.00
Balance Due NASD Dispute Resolution	= \$ 3,000.00

Respondent MSDW is solely liable for:

Member Fees	= \$ 8,550.00
Total Fees	= \$ 8,550.00
Less payments	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents MSDW and J.Gunnip are jointly and severally liable for:

Forum Fees	= \$4,200.00
Total Fees	= \$4,200.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$4,200.00

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

**ARBITRATION PANEL**

<i>Cynthia B. Stone</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Lee E. Karofsky, JD</i>	-	<i>Public Arbitrator</i>
<i>Barry Rabinowitz</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

/s/  
Lee E. Karofsky, JD  
Public Arbitrator

05/20/04  
Signature Date

/s/  
Barry Rabinowitz  
Non-Public Arbitrator

05/21/04  
Signature Date

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**Concurring in Part and Dissenting in Part Arbitrator's Signature**

Arbitrator Stone dissents with respect to the award of compensatory damages but concurs in all other respects.

/s/

Cynthia B. Stone

Public Arbitrator, Presiding Chairperson

05/20/04

Signature Date

05/21/04

Date of Service (For NASD Dispute Resolution office use only)

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Arbitration No. 03-06179  
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**Fee Summary**

Claimants are jointly and severally liable for:

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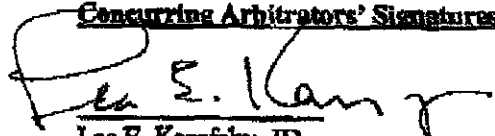
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**ARBITRATION PANEL**

Cynthia B. Stone  
Lee E. Karofsky, JD  
Barry Rabinowitz

Public Arbitrator, Presiding Chairperson  
Public Arbitrator  
Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



Lee E. Karofsky, JD  
Public Arbitrator

5/20/04  
Signature Date

Barry Rabinowitz  
Non-Public Arbitrator

Signature Date

**Fee Summary**

Claimants are jointly and severally liable for:

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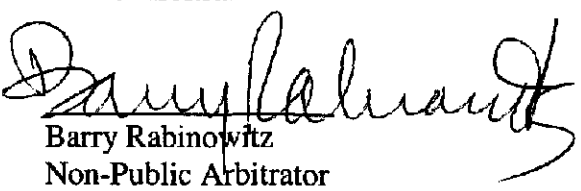
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<i>Barry Rabinowitz</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Lee E. Karofsky, JD  
Public Arbitrator

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

  
Barry Rabinowitz  
Non-Public Arbitrator

  
Signature Date

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Concurring in Part and Dissenting in Part Arbitrator's Signature

Arbitrator Stone dissents with respect to the award of compensatory damages but concurs in all other respects.

*Cynthia B. Stone*

Cynthia B. Stone  
Public Arbitrator, Presiding Chairperson

*May 20, 2004*

Signature Date

Date of Service (For NASD Dispute Resolution office use only)