

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

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In the Matter of the Arbitration Between:

Harold and Madeleine Dyke, Anthony Escobar, Sharon Simpson Favazzo, Susan Inverno, John Molina, Evelena Weber, Victor Weber, Robert and Sandra Wells, and Clara Marlene Zanders,  
Claimants v. Morgan Stanley DW Inc., Bruce F. Alonso, and Peter M. Avelar, Respondents

Case Number: 03-06470

Hearing Site: Los Angeles, California

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

**REPRESENTATION OF PARTIES**

For Claimants:

John Lawrence Allen, Esq.  
Law Offices of John Lawrence Allen  
New York, New York

For Respondents:

Mark E. McKane, Esq.  
Kirkland & Ellis LLP  
San Francisco, California

**CASE INFORMATION**

Statement of Claim filed: September 5, 2003

Claimants Harold and Madeleine Dyke's Joint Uniform Submission Agreement signed:  
August 28, 2003

Claimant Anthony Escobar's Uniform Submission Agreement signed: September 1, 2003

Claimant Sharon Simpson Favazzo's Uniform Submission Agreement signed: August 28, 2003

Claimant Susan Inverno's Uniform Submission Agreement signed: August 30, 2003

Claimant John Molina's Uniform Submission Agreement signed: September 3, 2003

Claimant Evelena Weber's Uniform Submission Agreement signed: August 30, 2003

Claimant Victor Weber's Uniform Submission Agreement signed: August 30, 2003

Claimants Robert and Sandra Wells' Joint Uniform Submission Agreement signed:  
August 29, 2003

Claimant Clara Marlene Zanders' Uniform Submission Agreement signed: August 29, 2003

Respondents' Joint Statement of Answer filed: December 3, 2003

Respondent Morgan Stanley DW Inc.'s Uniform Submission Agreement signed:  
December 3, 2003

Respondent Bruce F. Alonso's Uniform Submission Agreement signed: December 16, 2003

Respondent Peter M. Avelar's Uniform Submission Agreement signed: December 3, 2003

### **CASE SUMMARY**

Claimants alleged intentional and negligent misrepresentation, breach of contract, fraud, gross mismanagement, unsuitability, breach of fiduciary duty, breach of trust, gross recklessness, violation of the Prudent Man Rule, violation of NASD Conduct Rule 2830, violations of federal securities laws, violations of the California Corporations Code, violations of the California Business and Professions Code, breach of implied covenant of good faith and fair dealing, failure to supervise, and unfair competition involving transactions in shares of the Morgan Stanley High Yield Bond Fund.

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

### **RELIEF REQUESTED**

Claimants Harold and Madeleine Dyke requested \$149,103.00 in compensatory damages. Claimant Anthony Escobar requested \$220,000.00 in compensatory damages. Claimant Sharon Simpson Favazzo requested \$15,000.00 in compensatory damages. Claimant Susan Inverno requested \$70,881.00 in compensatory damages. Claimant John Molina requested \$1,500,205.00 in compensatory damages. Claimant Evelena Weber requested \$140,055.00 in compensatory damages. Claimant Victor Weber requested \$68,773.00 in compensatory damages. Claimants Robert and Sandra Wells requested \$178,336.00 in compensatory damages. Claimant Clara Marlene Zanders requested \$79,771.00 in compensatory damages. All Claimants requested unspecified punitive, exemplary, and well-managed damages, pre- and post-award interest at the legal rate, and costs, including attorney's fees.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety.

**OTHER ISSUES CONSIDERED AND DECIDED**

On January 20, 2004, Claimants Harold and Madeleine Dyke and Claimants' counsel 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 January 20, 2004, Claimant Susan Inverno and Claimant's counsel 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 January 21, 2004, Claimant Clara Marlene Zanders and Claimant's counsel 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 January 22, 2004, Claimant Evelena Weber and Claimant's counsel 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 January 22, 2004, Claimants Robert and Sandra Wells and Claimants' counsel 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 January 24, 2004, Claimant Victor Weber and Claimant's counsel 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 January 26, 2004, Claimant Sharon Simpson Favazzo and Claimant's counsel 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 January 30, 2004, Claimant Anthony Escobar and Claimant's counsel 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 February 3, 2004, Claimant John Molina and Claimant's counsel submitted 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 waivers 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 September 29, 2004, Claimants dismissed all claims against Respondent Bruce F. Alonso with prejudice.

On December 21, 2004, NASD Dispute Resolution received notice of settlement among all parties.

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

### **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. Claimants and Respondents have entered into a confidential settlement agreement.
2. Claimants' claims against Respondents Morgan Stanley DW Inc. and Peter M. Avelar are dismissed in their entirety with prejudice.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Bruce F. Alonso's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Bruce F. Alonso must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
4. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Peter M. Avelar's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Peter M. Avelar must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
5. Each party shall bear his, her, or its own costs, including attorneys' fees and forum fees.
6. Any and all relief not expressly granted, including punitive damages, is denied.

### **FEEs**

Pursuant to the Code of Arbitration Procedure ("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 | = \$ 500.00 |
|--------------------------|-------------|

#### **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           | = \$ 2,800.00        |
| Pre-Hearing Process Fee    | = \$ 750.00          |
| <u>Hearing Process Fee</u> | <u>= \$ 5,000.00</u> |
| Total Member Fees          | = \$ 8,550.00        |

#### **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 Chair/Panel. The following fees are assessed:

|   |               |
|---|---------------|
| One (1) Pre-hearing conference session with the Panel @ \$1,200.00 /session | = \$ 1,200.00 |
| Pre-hearing conference: May 5, 2004 1 session                               |               |

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|                         |                      |
|-------------------------|----------------------|
| <b>Total Forum Fees</b> | <b>= \$ 1,200.00</b> |
|-------------------------|----------------------|

1. The Panel assessed \$600.00 of the forum fees jointly and severally to Claimants Harold and Madeleine Dyke, Anthony Escobar, Sharon Simpson Favazzo, Susan Inverno, John Molina, Evelena Weber, Victor Weber, Robert and Sandra Wells, and Clara Marlene Zanders.
2. The Panel assessed \$600.00 of the forum fees jointly and severally to Respondents Morgan Stanley DW Inc., Bruce F. Alonso, and Peter M. Avelar.

**Fee Summary**

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

|                             |                      |
|-----------------------------|----------------------|
| Initial Filing Fee          | = \$ 500.00          |
| <u>Forum Fees</u>           | = \$ 600.00          |
| Total Fees                  | = \$ 1,100.00        |
| <u>Less payments</u>        | = \$(1,800.00)       |
| <b>Refund Due Claimants</b> | <b>= \$ (700.00)</b> |

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

|  |                  |
|--|------------------|
| Member Fees                                | = \$ 8,550.00    |
| <u>Less payments</u>                       | = \$(8,550.00)   |
| <b>Balance Due NASD Dispute Resolution</b> | <b>= \$ 0.00</b> |

3. Respondents are charged jointly and severally with the following fees and costs:

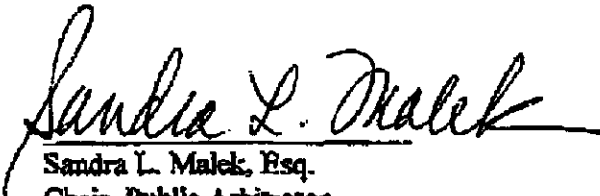
|  |                    |
|--|--------------------|
| Forum Fees                                 | = \$ 600.00        |
| <u>Less Payments</u>                       | = \$ 0.00          |
| <b>Balance Due NASD Dispute Resolution</b> | <b>= \$ 600.00</b> |

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**

|                             |   |                                    |
|-----------------------------|---|------------------------------------|
| Sandra L. Malek, Esq.       | - | Public Arbitrator, Presiding Chair |
| Mandel E. Himmelstein, Esq. | - | Public Arbitrator                  |
| Ronald F. Rybrandt          | - | Non-Public Arbitrator              |

**Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
Sandra L. Malek, Esq.  
Chair, Public Arbitrator

3/9/05  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Mandel E. Himmelstein, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Ronald F. Rybrandt  
Non-Public Arbitrator

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

3/9/05  
\_\_\_\_\_  
Date of Service

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Public Arbitrator

3/9/05  
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Signature Date

\_\_\_\_\_  
Ronald F. Rybrandt  
Non-Public Arbitrator

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

3/9/05  
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Chair, Public Arbitrator

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Signature Date

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Mandel E. Himmelstein, Esq.  
Public Arbitrator

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

  
\_\_\_\_\_  
Ronald F. Rybrandt  
Non-Public Arbitrator

3-7-05  
\_\_\_\_\_  
Signature Date

3/9/05  
\_\_\_\_\_  
Date of Service