

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

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In the Matter of the Arbitration Between:

Name of the Claimants

Laura Spragins, Lance Spragins  
and Neill Spragins

Case Number: 03-09078

Name of the Respondent

Morgan Stanley DW Inc.

Hearing Site: Dallas, Texas

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**NATURE OF DISPUTE**

Public Customer v. Member Firm

**REPRESENTATION OF PARTIES**

Claimants Laura Spragins, Lance Spragins and Neill Spragins, hereinafter collectively referred to as "Claimants": John Brooks, Esq. of the Law Offices of Brooks & Campbell, LLP, located in Wichita Falls, Texas.

Respondent Morgan Stanley DW Inc., hereinafter referred to as "Respondent": Jeffrey Silverman, Esq. of Morgan Stanley DW Inc., located in San Francisco, California.

**CASE INFORMATION**

Statement of Claim filed: December 24, 2003.

Claimants signed the Uniform Submission Agreement: December 4, 2003.

Statement of Answer filed by Respondent: May 12, 2004.

Amended Statement of Answer filed: June 25, 2004.

Respondent signed the Uniform Submission Agreement: May 12, 2004.

Respondent's Brief and Declarations in Support of Motion to Dismiss filed on: October 1, 2004.

Claimants' Brief in Support of Claimants' Right to Hearing and Response to Respondent's Motion to Dismiss filed on: October 15, 2004.

Respondent's Reply Brief in Support of Its Motion to Dismiss filed on: October 22, 2004.

Claimants' Reply Brief filed on: October 29, 2004.

**CASE SUMMARY**

Claimants asserted the following causes of action: unsuitable recommendations; negligence; breach of contract; breach of fiduciary duty; and failure to supervise. The causes of action

related to the Respondents concentrating Claimants' account in high-tech stocks, such as Dell Corporation.

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

1. Claimants have failed to state a claim upon which relief can be granted;
2. The Trust was full advised of and understood the nature of the securities purchased in its Morgan Stanley accounts and granted informed consent with respect to the transactions in its accounts. Accordingly, Claimants are not entitled to any relief in this action;
3. The diminution in value of the Trust's investments was caused by market declines and economic conditions outside the control of the Respondent;
4. The Trust approved, participated in and ratified the acts and transactions they complain about. Claimants are barred from any recovery in this action under the doctrines of waiver, estoppel and ratification;
5. Any alleged losses were proximately caused by the Trustee's and the beneficiaries' own decisions, conduct and/or negligence, not by any action or inaction on the part of Respondent;
6. Claimants' claims are barred as a result of their failure to mitigate their alleged damages;
7. The claims are barred because the Claimants lack standing to bring an action based on the regulations of the securities industry;
8. The claims are barred because the Claimants lack standing to sue Morgan Stanley for alleged injuries to the ESSCO Trust. Any alleged claims against Morgan Stanley would belong to the trustee. Claimants have no privity with Morgan Stanley and cannot bring their claims as trust beneficiaries;
9. Claimants' claims are barred by the applicable statute of limitations;
10. The Claims are barred because the Trust and Claimants expressly and by their actions assumed the risks of their investment strategy;
11. The Claims are barred based on the Unconditional Release of Liability between the Claimants and the successor trustee of the Trust;
12. The Claims are barred based on the one satisfaction rule in that recovery herein would constitute an improper dual recovery;
13. Claimants' request for punitive damages should be stricken on the grounds that Claimants cannot establish that Respondent acted with willful or wanton conduct, fraud or malice; and,
14. Claimants request for attorney fees and economic damages and/or mental anguish damages should be stricken on grounds that Claimants have failed to state a claim upon which such relief can be granted;
15. The claim is ineligible for arbitration pursuant to Rule 10304 of the NASD Code of Arbitration Procedure.

### **RELIEF REQUESTED**

**Claimants requested:**

Compensatory Damages	\$3,034,621.00
Punitive Damages	As allowed by statute or common law
Interest	As allowed by statute or common law
Attorneys' Fees	As allowed by statute or common law
Other Costs	As determined by Panel
Other Monetary/Non-Monetary Relief if any:	As determined by Panel

Respondent requested that the claim be dismissed and denied in its entirety.

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

On December 13, 2004, the Panel heard argument and considered Respondent's Motion to Dismiss. After deliberations, on or about December 29, 2004, the Panel granted Respondent's Motion to Dismiss and the claims are hereby dismissed with prejudice.

### **AWARD**

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

1. The Motion to Dismiss filed by Respondent is granted and the Statement of Claim is dismissed with prejudice;
2. The parties shall bear their own costs of arbitration, including any attorneys' fees, except for those sums specifically enumerated herein; and,
3. Any and all relief not specifically addressed herein, including punitive or treble 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
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#### **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, Morgan Stanley DW Inc. is a party and the following member fees are assessed:

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

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed: None.

**Forum Fees and Assessments**

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

Two (2) Pre-hearing sessions with Panel @ \$1,200.00	= \$ 2,400.00
Pre-hearing conferences: September 7, 2004 1 session	
December 13, 2004 1 session	
<hr/> Total Forum Fees	<hr/> = \$ 2,400.00

The Panel has assessed \$1,200.00 of the forum fees, jointly and severally, to Claimants Laura Spragins, Lance Spragins and Neill Spragins, and has assessed the remaining \$1,200.00 of the forum fees to Respondent Morgan Stanley DW Inc.

**FEE SUMMARY**

Claimants Laura Spragins, Lance Spragins and Neill Spragins are jointly and severally liable for:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$ 1,200.00
Total Fees	= \$ 1,800.00
Less payments	= \$ 1,800.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Morgan Stanley DW Inc. is solely liable for:

Member Fees	= \$ 8,550.00
Forum Fees	= \$ 1,200.00
Total Fees	= \$ 9,750.00
Less payments	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 1,200.00

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

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**ARBITRATION PANEL**

Ann Blaess Kimball, Esq. - Public Arbitrator, Presiding Chairperson  
James Mervin Benson, Jr., Esq. - Public Arbitrator  
Raymond E. Jennison - Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Ann Blaess Kimball  
Ann Blaess Kimball, Esq.  
Public Arbitrator, Presiding Chairperson

January 6, 2005  
Signature Date

James Mervin Benson, Jr., Esq.  
James Mervin Benson, Jr., Esq.  
Public Arbitrator

Signature Date

Raymond E. Jennison  
Raymond E. Jennison  
Non-Public Arbitrator

Signature Date

1/13/05 R/m  
Date of Service (For NASD Dispute Resolution office use only)

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