

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Claimants

Kenneth A. Woloszyk and Roxanna  
("Roxanne") M. Woloszyk

and

Case Number: 04-00231  
Hearing Site: Troy, Michigan

Respondents

Fifth Third Securities, Inc.,  
Morgan Stanley DW, Inc.,  
Jacqueline a/k/a Jaqueline A. Antone,  
James Gordon Riley, and  
Theodore J. Vogt, Jr.

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**NATURE OF DISPUTE**

Customers v. Members and Associated Persons

**REPRESENTATION OF PARTIES**

Kenneth A. Woloszyk and Roxanna M. Woloszyk ("Claimants") were represented by Peter A. Patterson, Esq., Ada, Michigan.

Fifth Third Securities Inc. ("Fifth-Third") was represented by Joseph M. Callow, Jr., Esq., Keating, Muething & Klekamp, PLL, Cincinnati, Ohio.

Morgan Stanley DW, Inc. ("MSDW"), Jacqueline a/k/a Jaqueline A. Antone ("Antone"), James Gordon Riley ("Riley"), and Theodore J. Vogt, Jr. ("Vogt") hereinafter referred to collectively as "MSDW Respondents," were represented by Raymond W. Henney, Esq., Honigman, Miller, Schwartz and Cohn, LLP, Detroit, Michigan.

**CASE INFORMATION**

The Statement of Claim was filed on or about January 14, 2004. The Submission Agreement of Kenneth A. Woloszyk and Roxanna M. Woloszyk was signed on or about December 30, 2003.

The Statement of Answer was filed by Fifth Third on or about April 12, 2004. The Submission Agreement of Fifth Third was signed on or about April 7, 2004.

The Statement of Answer was filed jointly by the MSDW Respondents on or about April 26, 2004. The Submission Agreement of MSDW was signed on or about July 1, 2004. The

Submission Agreement of Antone was signed on or about July 1, 2004. The Submission Agreement of Riley was signed on or about June 30, 2004. The Submission Agreement of Vogt was signed on or about July 2, 2004.

### **CASE SUMMARY**

Claimants asserted the following causes of action including the following: breach of contract, negligence, failure to supervise, breach of fiduciary duty, misrepresentation/non-disclosures, omission of facts, suitability, and undisclosed conflict of interest. The causes of action related to Claimants' allegations that their retirement IRA account was not managed conservatively. Specific securities involved included BBC Cap tr pfd, Putnam Growth and Income Fund, Putnam Voyager Fund, and Putnam New Opportunities Fund.

Unless specifically admitted in its Answer, Fifth Third denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimants' claims are barred by the applicable statute of limitations; estoppel; waiver and/or by superceding and/or intervening factors and events and/or the actions of Claimants and third parties subsequent to September 1998.

Unless specifically admitted in their Answer, the MSDW Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimants, at all times, held exclusive control over the structure and makeup of their portfolio and transactions; no contract exists between the parties for "management services;" and Claimants claims fail to state a cause of action.

### **RELIEF REQUESTED**

Claimants requested an award in the amount of \$250,000.00 in actual damages, plus \$250,000.00 in punitive damages, interest, witness and production fees, costs, and any other relief that may be appropriate.

Fifth Third requested that the claims asserted against it be dismissed in their entirety and that it be awarded its fees and costs associated with defending this arbitration.

The MSDW Respondents requested that Claimants' claim asserted against them be dismissed in its entirety and that Jacqueline a/k/a Jaqueline A. Antone's, James Gordon Riley's and Theodore J. Vogt, Jr.'s CRD records be expunged of all references to this matter.

### **OTHER ISSUES CONSIDERED & DECIDED**

James Gordon Riley was dismissed with prejudice prior to the hearing. The Panel did not adjudicate any issues against this Respondent at the hearings on the merits.

Claimants resolved their differences with Respondent Fifth Third Securities, Inc., on or about September 26, 2005. The Panel did not adjudicate any issues against this Respondent at the hearings on the merits.

Respondents MSCW, Antone, and Vogt orally moved for dismissal after the close of Claimants' case-in-chief. The panel denied the motion on the record.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

### **AWARD**

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

- 1.) Claimants' claims, each and all are denied and dismissed with prejudice;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 3.) Any relief not specifically enumerated, including punitive damages, expungement and attorneys' fees, is hereby denied with prejudice.

### **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 = \$ 300.00

### **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 persons at the time of the events giving rise to the dispute. In this matter, the member firms are Fifth Third Securities Inc., and Morgan Stanley DW, Inc.

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00

### **Adjournment Fees**

Adjournments requested during these proceedings:

June 20-24, 2005, adjournment by MSDW Respondents	= \$ 1,125.00
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### **Forum Fees and Assessments**

The Panel has assessed forum fees for each hearing session conducted and each decision tendered on a discovery-related motion on the papers. A hearing 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 a single arbitrator x \$450.00	= \$ 900.00
Pre-hearing conferences: September 26, 2005	1 session
November 4, 2005	1 session

One (1) Pre-hearing session with Panel x \$1,125.00	= \$ 1,125.00
Pre-hearing conference: August 27, 2004	1 session

Eight (8) Hearing sessions x \$1,125.00	= \$ 9,000.00
Hearing Dates: November 8, 2005	2 sessions
November 9, 2005	2 sessions
November 10, 2005	2 sessions
December 8, 2005	2 sessions

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Total Forum Fees	= \$11,025.00
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The Arbitration Panel has assessed \$5,512.50 of the forum fees jointly and severally to Claimants.

The Arbitration Panel has assessed \$5,512.50 of the forum fees jointly and severally to MSDW, Antone, and Vogt.

### Fee Summary

Claimants, Kenneth A. Woloszyk and Roxanna M. Woloszyk, are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 5,512.50
<u>Total Fees</u>	= \$ 5,812.50
<u>Less payments</u>	= \$ 2,125.00
Balance Due NASD Dispute Resolution	= \$ 3,687.50

Respondent, Fifth Third Securities, Inc., is liable for:

Member Fees	= \$ 5,200.00
<u>Total Fees</u>	= \$ 5,200.00
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent, Morgan Stanley DW, Inc., is liable for:

Member Fees	= \$ 5,200.00
<u>Total Fees</u>	= \$ 5,200.00
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents, Morgan Stanley DW, Inc., Jacqueline (a/k/a Jaqueline) A. Antone, and Theodore J. Vogt, Jr., are jointly and severally liable for:

Forum Fees	= \$ 5,512.50
<u>Total Fees</u>	= \$ 5,512.50
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 5,512.50

Respondents, Morgan Stanley DW, Inc., Jacqueline (a/k/a Jaqueline) A. Antone, and Theodore J. Vogt, Jr., and James Gordon Riley are jointly and severally liable for:

Adjournment Fee	= \$ 1,125.00
<u>Total Fees</u>	= \$ 1,125.00
<u>Less payments</u>	= \$ 1,125.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

**ARBITRATION PANEL**

Patrick R. Sughroue, Esq. - Public Arbitrator, Presiding Chair  
William P. Thorpe, Esq. - Public Arbitrator  
Gary C. Peters, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Patrick R. Sughroue, Esq.  
Patrick R. Sughroue, Esq.  
Public Arbitrator, Presiding Chair

12/12/05  
Signature Date

/s/ William P. Thorpe, Esq.  
William P. Thorpe, Esq.  
Public Arbitrator

12/12/05  
Signature Date

/s/ Gary C. Peters, Esq.  
Gary C. Peters, Esq.  
Non-Public Arbitrator


12/12/05  
Signature Date

12/12/05  
Date of Service (For NASD office use only)

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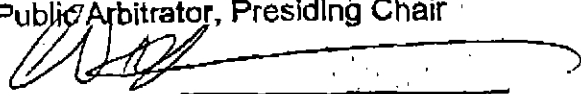
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