

The Respondents filed the Statement of Answer on or about April, 15, 2004.

Respondent Morgan Stanley submitted a signed Uniform Submission Agreement on March 28, 2004. On June 28, 2004, Respondent Butowsky submitted a signed Uniform Submission Agreement.

### **CASE SUMMARY**

Claimant asserted the following causes of action: Negligent misrepresentation, breach of fiduciary duty, negligence, fraud, and violations of the Texas Deceptive Trade Practices Act and the Securities Exchange Act of 1934.

Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant's alleged damages were illusory as she made a profit; Respondents were not fiduciaries; the Texas Deceptive Trades Practices Act does not apply; Respondents' recommendations were reasonable and suitable; Respondents committed no misrepresentations, were not negligent, did not engage in any civil conspiracy, breached no duty to Claimant, and did not violate any state or federal laws or statutes. Respondents also alleged that Claimant's claims are barred by the doctrines of waiver, laches, ratification and estoppel.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant Ann Mitchell requested unspecified damages as follows:

- Reimbursement for all losses
- Consequential damages including lost opportunities and lost profits
- Mental anguish
- Costs including attorney fees and expenses
- Punitive damages.

In their Answer, Respondents asked that all Mitchell's claims be denied in their entirety.

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

The parties settled this dispute. Claimant Mitchell and Respondents Morgan Stanley and Butowsky stipulated to the entry of a Stipulated Award, pursuant to which the parties consented to and requested that the Panel issue an Order directing NASD Central Registration Depository ("CRD") to expunge all reference to the above-captioned arbitration proceeding from Butowsky's CRD records and Forms U-5.

### **STIPULATED AWARD**

Pursuant to the parties' agreement, the Arbitration Panel, without making any findings of fact or conclusions of law, has entered the following determination:

1. Claimant's claims against Respondents Morgan Stanley and Butowsky are dismissed with prejudice.
2. The panel recommends the expungement of all reference to the above-captioned complaint from Respondent Butowsky's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Butowsky must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive. The panel notes that this matter was filed prior to the April 12, 2004 effective date of NASD Rule 2130.
3. Any and all relief not specifically addressed herein is 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	= \$1,575.00
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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 persons at the time of the events giving rise to the dispute. Morgan Stanley is a member firm and a party, and the following member fees are assessed:

Member surcharge	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$4,000.00

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

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

One (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: April 6, 2005 1 session	

Two (1) Pre-hearing session with Panel @ \$1,200.00	= \$2,400.00
Pre-hearing conference: August 24, 2004 1 session	
April 8, 2005 1 session	
<hr/> Total Forum Fees	<hr/> = \$2,850.00

Pursuant to Rule 10332(f) of the Code of Arbitration Procedure, NASD Dispute Resolution retains both the claim filing fee and the hearing session deposit of any arbitration settled within eight business days of the first scheduled hearing date. Therefore, the Claimant's claim filing fee and hearing session deposit have been retained by NASD Dispute Resolution.

The parties agree that forum fees shall be borne by Respondent Morgan Stanley.

**Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

April 12-14, 2005 hearings settled = \$ 300.00  
Cancellation fees have been assessed to Respondent Morgan Stanley.

**EEE SUMMARY**

Claimant Ann Mitchell is solely liable for:

Initial Filing Fee	= \$ 375.00
Rule 10332(f) forfeiture	= \$ 1,200.00
Total Fees	= \$ 1,575.00
<u>Less payments</u>	<u>= \$ 1,575.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Morgan Stanley DW Inc. is solely liable for:

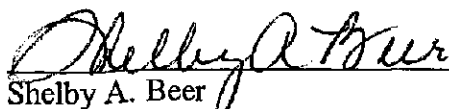
Member Fees	= \$ 7,000.00
Three-Day Cancellation Fee	= \$ 300.00
Forum Fees	= \$ 2,850.00
Total Fees	= \$10,150.00
<u>Less payments</u>	<u>= \$ 7,000.00</u>
Balance Due NASD Dispute Resolution	= \$ 3,150.00

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

**ARBITRATION PANEL**

Shelby A. Beer--Public Arbitrator, Chairperson  
Philip C. Crouse--Public Arbitrator  
Donald Vincent Enright--Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Shelby A. Beer  
Public Arbitrator, Chairperson

5-3-05  
Signature Date

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Philip C. Crouse  
Public Arbitrator

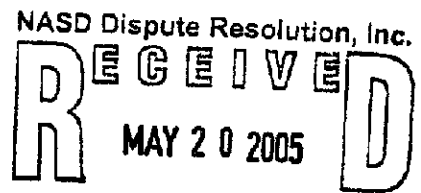
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Signature Date

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Donald Vincent Enright  
Non-Public Arbitrator

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Signature Date

5/20/05 R/m

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



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Philip C. Crouse--Public Arbitrator  
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Public Arbitrator, Chairperson

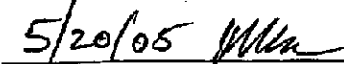
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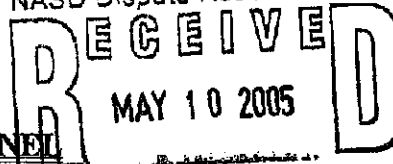
  
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Public Arbitrator

  
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Signature Date

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Donald Vincent Enright  
Non-Public Arbitrator

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Public Arbitrator, Chairperson

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Signature Date

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Philip C. Crouse  
Public Arbitrator

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Signature Date

  
Donald Vincent Enright  
Non-Public Arbitrator

May 4, 2005  
Signature Date

5/20/05 MM  
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