

NASD DISPUTE RESOLUTION AWARD
NASD DISPUTE RESOLUTION

CASE: 04-01179

James Brotherton, Sr., Claimant v. Morgan Stanley DW, Inc. and Keith J. Storms, Respondents

ATTORNEYS:

Claimant James Brotherton, Sr. ("Claimant") appeared *pro se*, Daytona Beach, FL.

For Respondents Morgan Stanley DW, Inc. and Keith J. Storms (collectively "Respondents") appeared Doreen S. Young, Esq., in-house counsel, Morgan Stanley DW, Inc., Sarasota, FL. Previously represented by: Jennifer L. Tomsen, Esq., of the firm Greenberg Traurig, P.A., Orlando, FL.

NATURE OF DISPUTE: Customer v. Member and Associated Person.

DATE FILED: February 23, 2004.

CASE SUMMARY: Claimant alleged that Respondents placed him in an investment that was unsuitable to his needs, age, and investment objectives. Claimant's claim involved the Morgan Stanley High Yield Corp. Bond. Claimant maintained that due to Respondents' actions, his account suffered losses.

ARBITRATOR'S REPORT: See attached Exhibit "A".

Claim Data

Claim: \$11,254.00
Interest: Unspecified
Costs: \$98.00
Filing Fees: \$125.00
Other: \$.00

Award Data

Award: \$.00
Interest: \$.00
Costs: \$.00
Filing Fees: \$.00
Other: \$.00

AWARD: The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) The claims of Claimant are dismissed in their entirety. 2) All requests for interest are denied. 3) All requests for costs are denied. 4) All other relief requests are denied. 5) NASD Dispute Resolution shall retain the \$425.00 filing fee that the Claimant deposited previously.

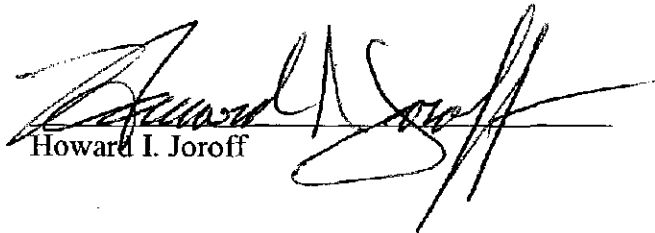
OTHER FEES: Pursuant to Rule 10333 of the Code, Respondent Morgan Stanley DW, Inc. has paid to NASD Dispute Resolution the \$425.00 Member Surcharge previously invoiced.

Howard I. Joroff

Sole Public Arbitrator

AFFIRMATION

I, Howard I. Joroff, do hereby affirm, upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.


Howard I. Joroff

11/19/04
Signature Date

December 1, 2004
Date of Service (For NASD-DR office use only)

In the Matter of the Arbitration Between:

James Brotherton,

Claimant,

Case Number 04-01179

v.

Morgan Stanley DW Inc. and
Keith Storms,

Respondents.

Statement of Claim filed on	02/40/2004
Claimant, James Brotherton, signed the Uniform Submission Agreement on	02/12/2004
Statement of Answer filed by Respondents, Morgan Stanley DW Inc. and Keith Storms on	04/05/2004
Respondents, Morgan Stanley DW Inc. and Keith Storms signed the Uniform Submission Agreements on	04/05/2004

Claimant asserted that the investment program developed by the Respondents was inappropriate for a retiree of his age (81) dependent on a fixed income. He claims that he transferred \$194,989 from The Kemper Gov. IRA Bond Fund to a program recommended by the Respondents. This program Included an initial investment of \$20,000 in the Morgan Stanley High Yield Corp Bond Fund. He claims that the fund was a low-grade "Junkbond" totally unsuitable for someone of his age and requirements. The Claimant requests an award covering his investment loss (\$11,254), interest (\$3,300), and expenses (\$223) for a total of \$14,777.

Respondents denied the allegations made in the statement of Claim and asserted the following defenses:

- 1> Claimant was an experienced investor who approved suggestions made before they were executed.
- 2> The "Second Investment Decision" rule bars claimant's claims.
- 3> The claimant's investments declined in value during the Market's unprecedented long spiral downward.
- 4> Respondents met all duties owed to Claimant.
- 5> Morgan Stanley fulfilled its duty to supervise.
- 6> Claimant fails to state any cause of action upon which relief may be granted.
- 7> Claimant was fully advised of, and understood the nature of, the investments purchased in his account.
- 8> Claimant had full, complete, accurate, and contemporaneous knowledge concerning his account and the subject transactions.
- 9> Claimants claims are barred as a result of his failure to minimize or mitigate his alleged damages.

10>Claimants claims are barred as a result of his failure to exercise due diligence and/or his failure to timely disaffirm the transactions and acts complained of in the claim despite knowledge of these actions and transactions.

11>Claimant had full control over the investment decisions in his account; any losses were the result of market price fluctuations and risks the claimant knowingly assumed.

Respondent further state that the Claimant is not entitled to either punitive damages or attorney's fees.

After considering the pleadings and documentation submitted by the parties the undersigned, as sole arbitrator, have decided in full and final resolution of the issues that the Claimant is not entitled to any relief in this matter. The Claimant was a knowledge investor who was involved in all transactions in his account and by not objecting to any purchase when they occurred ratified these transactions. If the Claimant felt (based on his reading of the prospectus) that a particular fund did not fit his investment strategy he could have declined to make the purchase. At any point in time, during which his account was held by the Respondents, the Claimant could have requested that any fund he was unhappy with be sold. Any losses suffered by the Claimant were caused by his own decisions and apparently by the general decline in the investment market.

Howard I. Joroff
Public Arbitrator



Signature

10/29/04
Date