

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

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In the Matter of the Arbitration Between:

Robert C. Alspaugh and Betty J. Alspaugh, Trustees, The Alspaugh Family Trust dtd 8/18/93,  
Claimants v. Morgan Stanley DW Inc. and Steven A. Samet, Respondents

Case Number: 04-01343

Hearing Site: San Diego, California

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

**REPRESENTATION OF PARTIES**

For Claimants:

William S. Bonnheim, Esq.  
William S. Bonnheim, PLC  
Palm Desert, California

For Respondents:

Helene J. Jepson, Esq.  
Morgan Stanley DW Inc.  
San Francisco, California

**CASE INFORMATION**

Statement of Claim filed: February 20, 2004

Claimants' Joint Uniform Submission Agreement signed: December 15, 2003

Joint Statement of Answer filed by Respondents: May 5, 2004

Respondent Morgan Stanley DW Inc.'s Uniform Submission Agreement signed: May 5, 2004

Respondent Steven A. Samet's Uniform Submission Agreement signed: May 5, 2004



### **CASE SUMMARY**

Claimants alleged suitability, breach of fiduciary duty, constructive fraud, failure to supervise, and violation of federal and state securities laws, NASD rules of fair practice and NYSE rules. The dispute involved the purchase and/or sale of Pfizer and American Home Products stock and Van Kampen Emerging Growth Fund, a Class B mutual fund, and Morgan Stanley DW Inc.'s American Opportunities Fund, a Class B mutual fund.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$50,000.00, all profits Respondents generated from the Accounts in an amount according to proof but not less than the total commission and fees generated in all unsuitable transactions Respondents executed for Claimants, lost opportunity cost, interest, and costs, including attorney's fees.

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

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

On March 10, 2004, Claimants 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 May 5, 2004, Respondents' counsel signed a Waiver Agreement on Respondents' behalf expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators

The parties agreed that a handwritten, signed Award may be entered.

### **AWARD**

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

- 1) Claimants' claims are denied in their entirety.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) All other relief requested and not expressly granted 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	= \$ 175.00
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#### **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	= \$ 875.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 1,000.00</u>
<b>Total Member Fees</b>	<b>= \$ 2,625.00</b>

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

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

Two (2) Pre-hearing conference sessions with the arbitrator @ \$450.00/session	= \$ 900.00
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Pre-hearing conferences:	July 20, 2004	1 session
	November 1, 2004	1 session

Four (4) Hearing sessions @ \$450.00/session	= \$ 1,800.00
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Hearings:	January 4, 2005	2 sessions
	January 5, 2005	2 sessions

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<b>Total Forum Fees</b>	<b>= \$ 2,700.00</b>
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1. The Arbitrator assessed \$1,350.00 of the forum fees jointly and severally to Claimants.
2. The Arbitrator assessed \$1,350.00 of the forum fees jointly and severally to Respondents.



**Fee Summary**

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

Initial Filing Fee	= \$ 175.00
<u>Forum Fees</u>	= \$ 1,350.00
Total Fees	= \$ 1,525.00
<u>Less payments</u>	= \$( 625.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 900.00</b>

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

Member Fees	= \$ 2,625.00
<u>Less payments</u>	= \$(2,625.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

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

<u>Forum Fees</u>	= \$ 1,350.00
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 1,350.00</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.



**ARBITRATOR**

Robert W. Vernon, CPA

Public Arbitrator, Presiding Chair

**Arbitrator's Signature**



Robert W. Vernon, CPA  
Chair, Public Arbitrator

1/6/05  
Signature Date

January 6, 2005  
Date of Service