

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

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In the Matter of the Arbitration Between:

Kathryn E. Weyand as Trustee of the Margaret T. Weyand Revocable Living Trust dated 11-9-90, Claimant v. Carola Barton, Bill Svoboda, and Morgan Stanley DW Inc., Respondents

Case Number: 04-01612

Hearing Site: San Francisco, California

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Nature of the Dispute: Customer v. Member and Associated Persons

**REPRESENTATION OF PARTIES**

For Claimant:

Kathryn R. Weyand  
Cupertino, California

For Respondents:

Wendy R. Robinson, Esq.  
Morgan Stanley Law  
Department  
San Francisco, California

**CASE INFORMATION**

Statement of Claim filed: March 5, 2004

Amended Statement of Claim filed: July 30, 2004

Claimant's Uniform Submission Agreement signed: March 5, 2004

Joint Statement of Answer filed by Respondents Carola Barton and Bill Svoboda: May 7, 2004

Joint Statement of Answer to Amended Claim filed by Respondents Carola Barton and Morgan Stanley DW Inc.: October 25, 2004

Respondent Carola Barton's Uniform Submission Agreement signed: May 7, 2004

Respondent Bill Svoboda's Uniform Submission Agreement signed: May 5, 2004

### **CASE SUMMARY**

In the Statement of Claim, Claimant alleged breach of fiduciary duty, negligence, misrepresentation, omission of fact, unsuitability, and failure to supervise. Claimant's allegations involved stock in UPS, Cisco, Agilent, Public Services Enterprise Group, and AT&T. Claimant's allegations also involved Morgan Stanley's Dividend Growth Fund and Morgan Stanley's Information Technology Fund.

In the Amended Claim, Claimant added Morgan Stanley DW Inc. as a respondent and added claims regarding investments in Northwestern Capital Trust I Preferred.

Respondents denied the allegations of wrongdoing set forth in Claimant's Statements of Claim.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested \$21,043.86 in compensatory damages, \$2,000.00 in punitive damages, and \$1,350.00 in costs.

In the Amended Statement of Claim, Claimant requested \$20,698.00 in compensatory damages, \$4,293.00 in punitive damages, and \$1,350.00 in costs

Respondents requested dismissal of the Claimant's Statements of Claim in their entirety, expungement of all reference to this matter from Respondents CRD records, and costs.

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

Respondent Morgan Stanley DW Inc. did not file with the NASD Dispute Resolution a properly executed submission agreement but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure and having answered the claim, appeared and testified at the hearing, is bound by the determination of the Arbitrator on all issues submitted.

On March 22, 2005, Claimant 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.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

On May 7, 2004, Respondent Bill Svoboda filed a motion for dismissal from this matter and for expungement of all reference to this matter from his registration records maintained with the NASD Central Registration Depository ("CRD"). On June 4, 2004, Claimant filed a response to this motion wherein she asked that, if Respondent Bill Svoboda's motion for dismissal was granted, she be given an opportunity to amend her claim to add Morgan Stanley DW Inc. as a Respondent. On July 30, 2004, Claimant filed an Amended Statement of Claim. On October 12, 2004, the Arbitrator granted Respondent Bill Svoboda's motion for dismissal and expungement, and accepted Claimant's Amended Statement of Claim.

On November 3, 2004, the Arbitrator requested an in-person hearing pursuant to Rule 10302(f). The Arbitrator elected not to decide this matter solely on the paper records.

On April 8, 2005, the Arbitrator advised NASD that the original Award, served on March 28, 2005, had a ministerial error. In the original Award, the forum fees were assessed half to Claimant and half to Respondent Morgan Stanley DW Inc. The forum fees should have been assessed entirely to Respondent Morgan Stanley DW Inc. Therefore, in order to correct this ministerial error, this Amended Award is being issued and shall supercede the original Award.

### 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) Claimant's claims are denied in their entirety.
- 2) The Arbitrator recommends the expungement of all reference to the above-captioned arbitration from Respondents Bill Svoboda's and Carola Barton's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondents Bill Svoboda and Carola Barton must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 3) The parties shall bear their respective costs, including attorney's fees.
- 4) All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the 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 = \$ 125.00

#### **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 = \$ 425.00

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

The Arbitrator assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Arbitrator. The following fees are assessed:

(2) Pre-hearing conference sessions @ \$450.00/session = \$ 900.00

Pre-hearing conferences:      December 20, 2004      1 session  
   March 1, 2005              1 session

(5) Hearing sessions @ \$450.00/session = \$2,250.00

Hearings:                              March 22, 2004              2 sessions  
   March 23, 2004              3 sessions

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**Total Forum Fees** = **\$3,150.00**

1. The Arbitrator assessed the entire \$3,150.00 in forum fees to Respondent Morgan Stanley DW Inc.

**Fee Summary**

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 125.00
<u>Less payments</u>	= \$ (425.00)
<b>Refund Due</b>	<b>= \$ (300.00)</b>

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

Member Fees	= \$ 425.00
<u>Forum Fees</u>	= \$ 3,150.00
Total Fees	= \$ 3,575.00
<u>Less payments</u>	= \$(1,425.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 2,150.00</b>

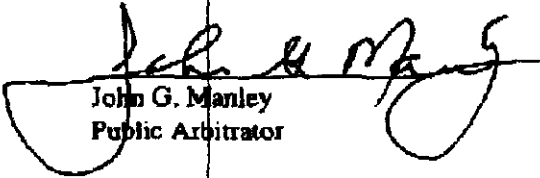
All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

**ARBITRATOR**

John G. Manley

Public Arbitrator

**Arbitrator's Signature**

  
John G. Manley  
Public Arbitrator

4-8-2005  
Signature Date

4/8/05  
Date of Service