

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Richard C. Wallace and Willa Dean Wallace, Claimants v. Morgan Stanley DW Inc., Kathleen Pires Swan, and Wells Fargo Investments, LLC, Respondents

Case Number: 04-01678

Hearing Site: Los Angeles, California

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

REPRESENTATION OF PARTIES

For Claimants:

**Richard and Willa Dean Wallace
Pro Se
Lake Isabella, California**

For Respondent Morgan Stanley DW Inc.:

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

**For Respondents Kathleen Pires Swan and
Wells Fargo Investments, LLC:**

**Thomas F. Kopshever, Esq.
Wells Fargo Bank,
National Association
San Francisco, California**

CASE INFORMATION

Statement of Claim filed: March 8, 2004

Claimants' Joint Uniform Submission Agreement signed: March 8, 2004

**Statement of Answer and Motion to Dismiss filed by Respondent Morgan Stanley DW Inc.:
June 10, 2004**

**Joint Statement of Answer filed by Respondents Kathleen Pires Swan and Wells Fargo
Investments, LLC: June 10, 2004**

Respondent Morgan Stanley DW Inc.'s Uniform Submission Agreement signed: June 10, 2004

Respondent Kathleen Pires Swan's Uniform Submission Agreement signed: June 10, 2004

Respondent Wells Fargo Investments, LLC's Uniform Submission Agreement signed:
June 10, 2004

CASE SUMMARY

Claimants alleged misrepresentation and non-disclosures, omission of facts, suitability, and failure to supervise, involving transactions in unspecified mutual funds.

Respondent Morgan Stanley DW Inc. denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim and asserted affirmative defenses.

Respondents Kathleen Pires Swan and Wells Fargo Investments, LLC denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested \$47,000.00 in compensatory damages, \$400,000.00 in punitive damages, and costs.

Respondent Morgan Stanley DW Inc. requested dismissal of the Claimants' Statement of Claim in its entirety.

Respondents Kathleen Pires Swan and Wells Fargo Investments, LLC requested dismissal of the Claimants' Statement of Claim in its entirety and costs, including attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

On April 20, 2004, pursuant to Rule 10328(a) of the *NASD Code of Arbitration Procedure* ("Code"), Claimants amended their Uniform Submission Agreement to add Respondent Morgan Stanley DW Inc.

On June 10, 2004, Respondent Morgan Stanley DW Inc.'s counsel signed a Waiver Agreement on Respondent's behalf expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On June 23, 2004, Claimants 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 Claimants 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 December 9, 2004, after due deliberation of the motion, responses, and oral arguments presented, the Panel granted Respondent Morgan Stanley DW Inc.'s Motion to Dismiss.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, testimony, and evidence presented at the hearing, the Panel 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, 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	= \$ 300.00
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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	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 2,750.00
Total Member Fees	= \$ 5,200.00

The member firm Wells Fargo Investments, LLC is a party and the following fees are assessed:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 2,750.00</u>
Total Member Fees	= \$ 5,200.00

Forum Fees and Assessments

The Panel 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 Chair or the parties and the Panel. The following fees are assessed:

Two (2) Pre-hearing conference sessions with the Panel @ \$1,125.00/session	= \$ 2,250.00
Pre-hearing conferences: September 22, 2004	1 session
December 7, 2004	1 session
Two (2) Hearing sessions @ \$1,125.00/session	= \$ 2,250.00
Hearing: April 20, 2005	2 sessions
Total Forum Fees	= \$ 4,500.00

1. The Panel assessed \$2,250.00 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$2,250.00 of the forum fees jointly and severally to Respondents Kathleen Pires Swan and Wells Fargo Investments, LLC.

Fee Summary

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

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$ 2,250.00</u>
Total Fees	= \$ 2,550.00
<u>Less payments</u>	<u>= \$(1,425.00)</u>
Balance Due NASD Dispute Resolution	= \$ 1,125.00

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

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

3. Respondent Wells Fargo Investments, LLC is charged the following fees and costs:

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

4. Respondents Kathleen Pires Swan and Wells Fargo Investments, LLC are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 2,250.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 2,250.00

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.

ARBITRATION PANEL

Jerry Ellner	-	Public Arbitrator, Presiding Chair
Ronald E. Malmfeldt	-	Public Arbitrator
William L. Hildeburn, Jr.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Jerry Ellner
Chair, Public Arbitrator

April 30, 2005
Signature Date

Ronald E. Malmfeldt
Public Arbitrator

Signature Date

William L. Hildeburn, Jr.
Non-Public Arbitrator

Signature Date

4/21/05
Date of Service

ARBITRATION PANEL

Jerry Ellner	-	Public Arbitrator, Presiding Chair
Ronald E. Malmfeldt	-	Public Arbitrator
William L. Hildeburn, Jr.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures:

Jerry Ellner
Chair, Public Arbitrator

Signature Date



Ronald E. Malmfeldt
Public Arbitrator

4-20-05

Signature Date

William L. Hildeburn, Jr.
Non-Public Arbitrator

Signature Date

4/21/05

Date of Service

ARBITRATION PANEL

Jerry Ellner	-	Public Arbitrator, Presiding Chair
Ronald E. Mahnsfeldt	-	Public Arbitrator
William L. Hildeburn, Jr.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Jerry Ellner
Chair, Public Arbitrator

Signature Date

Ronald E. Mahnsfeldt
Public Arbitrator

Signature Date



William L. Hildeburn, Jr.
Non-Public Arbitrator

4/21/05

Signature Date

4/21/05

Date of Service