

**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:)	
)	
<u>Name of the Claimant</u>)	<u>Case Number:</u> 04-02272
Janet A. Pritchard, Individually and)	
as Trustee of the Janet A. Pritchard)	<u>Hearing Site:</u> St. Louis, Missouri
Revocable Living Trust)	
)	
<u>Name of the Respondents</u>)	
Morgan Stanley DW, Inc. and)	
Richard Hogard)	

NATURE OF DISPUTE

Customer vs. Member Firm and Associated Person

REPRESENTATION OF PARTIES

Richard B. Fosher, Esq. of the law firm Oakes & Fosher, LLC, located in St. Louis, Missouri represented the Claimant, Janet A. Pritchard, Individually and as Trustee of the Janet A. Pritchard Revocable Living Trust ("Pritchard"), hereinafter referred to as "Claimant."

Jonathan D. Robbins, Esq. of Morgan Stanley DW, Inc., located in San Francisco, California filed an appearance on behalf of Morgan Stanley DW, Inc. ("Morgan Stanley") and Richard Hogard ("Hogard"). Reggie C. Giffin, Esq., with offices located in Kansas City, Missouri, later represented Morgan Stanley and Hogard, hereinafter collectively referred to as "Respondents."

CASE INFORMATION

Statement of Claim filed on March 29, 2004. Claimant Pritchard signed the Uniform Submission Agreement on March 26, 2004.

Statement of Answer jointly filed by Respondents, Morgan Stanley and Hogard, on June 8, 2004. Respondent Morgan Stanley signed the Uniform Submission Agreement on June 1, 2004. Respondent Hogard did not submit a signed Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: negligence, failure to supervise, breach of fiduciary duty, suitability, omission of facts, misrepresentations and common law fraud. The causes of action relate to stocks in Homestore.com, Intel, Lucent Technologies, Intuit, Sycamore Networks, Sappi Ltd., Tyco International, VISX, EMC Corp., Cisco Systems, Charter Communications, Agile Software and Sun Microsystems. Claimant asserted that these were speculative, high-risk and unsuitable stocks for Claimant's investment needs and objectives. Unless specifically admitted in its Answer, Respondents Morgan Stanley and Hogard denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Claimant has failed to state a claim upon which relief can be granted.
2. Claimant is not entitled to any recovery due to the doctrines of ratification, waiver and estoppel.
3. Each allegation in the Claim is barred by the principles of equity and laches.
4. Claimant knowingly and voluntarily assumed the risks of the investments, events and matters alleged, and any losses or damages incurred by Claimant was the proximate result of the risks, which Claimant knowingly assumed.
5. By the exercise of reasonable efforts, Claimant could have mitigated his alleged damages and therefore, is barred from recovering to the extent that he failed to do so.
6. At all times, Morgan Stanley reasonably followed and adhered to all compliance and supervisory procedures as well as all applicable rules of the NASD and NYSE.
7. Respondent, in discharging its duties by and through its agents, acted in good faith and exercised at all times the degree of care, diligence and skill which ordinarily prudent persons would exercise in similar circumstances and like positions.
8. Claimant ratified all transactions by failing to raise any concern about them or repudiate them within a reasonable period of time.

RELIEF REQUESTED

Claimant requested compensatory damages in the approximate amount of \$200,000; punitive damages; interest; attorneys fees; lost opportunity damages; commissions; fees charged by Respondents on Claimant's investments; capital gains taxes paid relating to the account; forum fees; and for other and further relief which the Panel deems just and proper.

Respondents requested that the Panel deny all claims in their entirety and for such other and further relief as the Panel deems appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Hogard did not file with NASD Dispute Resolution, a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

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, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Any and all claims asserted by Claimant, Janet A. Pritchard, Individually, and as Trustee of the Janet A. Pritchard Revocable Trust, is denied.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Richard Hogan'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 Hogard must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

3. Except as otherwise specified herein, parties shall bear their own costs, including attorneys' fees.
4. Any and all relief not specifically addressed herein, including punitive damages, is denied.

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	= \$ 300.00
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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 person at the time of the events giving rise to the dispute. Accordingly, Morgan Stanley is a party and is assessed the following:

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00

Forum Fees and Assessments

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

One (1) Pre-hearing session with Panel @ \$1,125.00	= \$ 1,125.00
Pre-hearing conference: August 10, 2004 1 session	

Eight (8) Hearing sessions @ \$1,125.00	= \$ 9,000.00
Hearing Dates: March 23, 2005 2 sessions	
March 24, 2005 3 sessions	
March 25, 2005 3 sessions	

Total Forum Fees	= \$10,125.00
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1. The Panel has assessed 50% of the total forum fees in the amount of \$5,062.50 solely to Claimant Pritchard; and
2. The Panel has assessed 50% of the total forum fees in the amount of \$5,062.50 jointly and severally to Respondents Morgan Stanley and Hogard.

FEES SUMMARY

1. Claimant, Janet A. Pritchard, is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$ 5,062.50</u>
Total Fees	= \$ 5,362.50
<u>Less payments</u>	<u>= \$ 1,425.00</u>
Balance Due NASD Dispute Resolution	= \$ 3,937.50

2. Respondent, Morgan Stanley DW, Inc., is solely liable for:

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

3. Respondents, Morgan Stanley DW, Inc. and Richard A. Hogard, are jointly and severally liable for:

Forum Fees	= \$ 5,062.50
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 5,062.50

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

ARBITRATION PANEL

Leah Balk-Teitelbaum, Esq.	-	Public Arbitrator, Presiding Chairperson
Richard L. Puhl	-	Public Arbitrator
Lynn D. (Doug) Newton	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

<u>/s/ Leah Balk-Teitelbaum, Esq.</u>	<u>3/28/05</u>
Leah Balk-Teitelbaum, Esq.	Signature Date
Public Arbitrator, Presiding Chairperson	

<u>/s/ Richard L. Puhl</u>	<u>3/29/05</u>
Richard L. Puhl	Signature Date
Public Arbitrator	

<u>/s/ Lynn D. Newton</u>	<u>3/28/05</u>
Lynn D. (Doug) Newton	Signature Date
Non-Public Arbitrator	

<u>3/29/05</u>	
Date of Service (For NASD Dispute Resolution office use only)	

NASD Dispute Resolution

Arbitration No. 04-02272

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FEF SUMMARY

1. Claimant, Janet A. Pritchard, is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 5,082.50
Total Fees	= \$ 5,382.50
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 3,937.50

2. Respondent, Morgan Stanley DW, Inc., is solely liable for:

Member Fees	= \$ 5,200.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents, Morgan Stanley DW, Inc. and Richard A. Hogard, are jointly and severally liable for:

Forum Fees	= \$ 5,082.50
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 5,082.50

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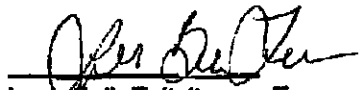
ARBITRATION PANEL

Leah Balk-Teitelbaum, Esq.

Richard L. Puhl

Lynn D. (Doug) Newton

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator
- Non-Public Arbitrator

Concurring Arbitrators' Signatures


Leah Balk-Teitelbaum, Esq.
Public Arbitrator, Presiding Chairperson



Signature Date

Richard L. Puhl
Public Arbitrator

Signature Date

Lynn D. (Doug) Newton
Non-Public Arbitrator

Signature Date

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

NASD Dispute Resolution
 Arbitration No. 04-02272
 Award Page 4 of 4

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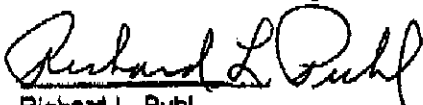
ARBITRATION PANEL

Leah Balk-Teitelbaum, Esq.	-	Public Arbitrator, Presiding Chairperson
Richard L. Puhl	-	Public Arbitrator
Lynn D. (Doug) Newton	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Leah Balk-Teitelbaum, Esq.
 Public Arbitrator, Presiding Chairperson

Signature Date


 Richard L. Puhl
 Public Arbitrator

3/29/05
 Signature/Date

Lynn D. (Doug) Newton
 Non-Public Arbitrator

Signature Date

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

Balance Due NASD Dispute Resolution

= \$ 5,062.50

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ARBITRATION PANEL

Leah Balk-Teitelbaum, Esq.

- Public Arbitrator, Presiding Chairperson

Richard L. Puhl

- Public Arbitrator

Lynn D. (Doug) Newton

- Non-Public Arbitrator

Concurring Arbitrators' Signatures

Leah Balk-Teitelbaum, Esq.

Signature Date

Public Arbitrator, Presiding Chairperson

Richard L. Puhl

Signature Date

Public Arbitrator

Lynn D. (Doug) Newton

Signature Date March 28, 2005

Non-Public Arbitrator



Date of Service (For NASD Dispute Resolution office use only) ☐ PRIVATE ☐ ☐ etc. ☐ ☐

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