

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

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In the Matter of the Arbitration Between:

Elaine B. Owen Revocable Trust, Claimant v. Morgan Stanley DW Inc., Allstate Assurance Company, Michael R. Walters, and Kimberly A. Blindheim, Respondents

Case Number: 04-02322

Hearing Site: Reno, Nevada

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

**REPRESENTATION OF PARTIES**

For Claimant:

Robert L. Crowell, Esq.  
Crowell, Susich, Owen & Tackets,  
Ltd.  
Carson City, Nevada

For Respondents Morgan Stanley DW Inc., Michael R.  
Walters, and Kimberly A. Blindheim:

Jonathan Robbins, Esq.  
Morgan Stanley  
San Francisco, California

For Respondent Allstate Assurance Company:

Paul R. Garry, Esq.  
Meckler Bulger & Tilson, LLP  
Chicago, Illinois

**CASE INFORMATION**

Statement of Claim filed: April 1, 2004

Claimant's Uniform Submission Agreement signed: March 30, 2004

Joint Statement of Answer filed by Respondents Morgan Stanley DW Inc., Michael R. Walters,  
and Kimberly A. Blindheim: July 30, 2004

Respondent Morgan Stanley DW Inc.'s Uniform Submission Agreement signed: July 30, 2004

Respondent Michael R. Walters' Uniform Submission Agreement signed: May 19, 2004

Respondent Kimberly A. Blindheim's Uniform Submission Agreement signed: June 9, 2004

### **CASE SUMMARY**

Claimant alleged unsuitability, failure of an NASD member firm to deal fairly with its customers, violation of Nevada law, violation of Rule 10b-5, and failure to supervise. Claimant's allegations involved a Morgan Stanley Variable Annuity II, which was formerly known as a Northbrook (Allstate) Variable Annuity II.

Respondents Morgan Stanley DW Inc., Michael R. Walters, and Kimberly A. Blindheim denied the allegations of wrongdoing set forth in Claimant's Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested \$96,345.00 in compensatory damages, rescission, \$385,380.00 in punitive damages, rescission, pre- and post-judgment interest and costs, including attorney's fees.

Respondents Morgan Stanley DW Inc., Michael R. Walters, and Kimberly A. Blindheim requested dismissal of Claimant's Statement of Claim in its entirety and expungement of this matter from Kimberly A. Blindheim's CRD records.

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

By letter dated July 29, 2004, Claimant dismissed with prejudice Allstate Corporation and its related entities and subsidiaries from this arbitration proceeding.

On July 30, 2004, Respondents Morgan Stanley DW Inc., Kimberly A. Blindheim and Michael R. Walters filed a Motion to Dismiss, which was incorporated in their Answer. On August 9, 2004, Claimant filed a Memorandum in Opposition to the Motion to Dismiss. On October 4, 2004, Respondents Morgan Stanley DW Inc., Kimberly A. Blindheim and Michael R. Walters filed a Reply to Claimant's Memorandum in Opposition to the Motion to Dismiss. By Order dated October 25, 2004, the Panel denied the Motion to Dismiss but allowed Respondents to raise their motion again after the presentation of Claimant's evidence at the evidentiary hearing.

On January 19, 2005, Respondents Morgan Stanley DW Inc., Kimberly A. Blindheim and Michael R. Walters moved to dismiss all claims after the close of Claimant's case in chief. On January 19, 2005, the Panel denied the motion.

On January 19, 2005, Respondents Kimberly A. Blindheim and Michael R. Walters moved to have the Panel recommend expungement of this matter from their CRD records. On January 19, 2005, the Panel denied the motion.

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) Claimant's claims are denied in their entirety.
- 2) Respondent Morgan Stanley DW Inc. shall reimburse Claimant Elaine B. Owen Revocable Trust its NASD filing fee in the amount of \$300.00.
- 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	= \$ 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
<u>Hearing Process Fee</u>	<u>= \$ 2,750.00</u>
<b>Total Member Fees</b>	<b>= \$ 5,200.00</b>

**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 27, 2004	1 session
October 25, 2004	1 session

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Four (4) hearing sessions @ \$1,125.00/session		= \$4,500.00
Hearings:		
	January 18, 2005	2 sessions
	January 19, 2005	2 sessions
<b>Total Forum Fees</b>		<b>= \$6,750.00</b>

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The Panel assessed \$6,750.00 of the forum fees to Morgan Stanley DW, Inc.

**Fee Summary**

1. Claimant Elaine B. Owen Revocable Trust is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
<u>Less payments</u>	<u>= \$(1,425.00)</u>
<b>Refund Due Claimant</b>	<b>= \$(1,125.00)</b>

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

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	<u>= \$ 6,750.00</u>
Total Fees	= \$11,950.00
<u>Less payments</u>	<u>= \$(5,950.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 6,000.00</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.


ARBITRATION PANEL

*Joseph C. Roberts*  
*Mary Alice Cox, CPA*  
*Barry A. Mainardi*

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*Public Arbitrator, Presiding Chair*  
*Public Arbitrator*  
*Non-Public Arbitrator*

Concurring Arbitrators' Signatures

  
\_\_\_\_\_  
Joseph C. Roberts  
Chair, Public Arbitrator

01/21/05  
Signature Date

\_\_\_\_\_  
Mary Alice Cox, CPA  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Barry A. Mainardi  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

1/24/05  
Date of Service

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<i>Joseph C. Roberts</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Mary Alice Cox, CPA</i>	-	<i>Public Arbitrator</i>
<i>Barry A. Mainardi</i>	-	<i>Non-Public Arbitrator</i>

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Chair, Public Arbitrator

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Signature Date

*Mary Alice Cox*  
\_\_\_\_\_  
Mary Alice Cox, CPA  
Public Arbitrator

*1/21/05*  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Barry A. Mainardi  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

*1/24/05*  
\_\_\_\_\_  
Date of Service

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<i>Mary Alice Cox, CPA</i>	-	<i>Public Arbitrator</i>
<i>Barry A. Mainardi</i>	-	<i>Non-Public Arbitrator</i>

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Joseph C. Roberts  
Chair, Public Arbitrator

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Signature Date

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Mary Alice Cox, CPA  
Public Arbitrator

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Signature Date

  
Barry A. Mainardi  
Non-Public Arbitrator

1-24-05  
Signature Date

1/24/05  
Date of Service