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

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In the Matter of the Arbitration Between:

Name of the Claimant

Estate of Alfred D. Rappaport

Case Number: 04-02796

Names of the Respondents

Morgan Stanley DW Inc.

Richard Jay Berger

Megan Marie McGrath

Hearing Site: Boca Raton, FL

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Nature of the Dispute: Customer vs. Member and Associated Person

**REPRESENTATION OF PARTIES**

For the Estate of Alfred D. Rappaport ("Rappaport"), hereinafter referred to as "Claimant": Lori Rappaport LaCroix, Co-Executrix and Robert Reznick, Esq., Boca Raton, Florida.

For Richard Jay Berger ("Berger"), Megan Marie McGrath ("McGrath"), and Morgan Stanley DW Inc. ("MSDW"), hereinafter referred to as "Respondents": Juan Carlos Real, Esq., Tucker H. Byrd, Esq. and Jennifer Tomsen, Esq., Greenberg Traurig, P.A., Orlando, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: May 11, 2004

The Uniform Submission Agreement signed on behalf of Claimant through its Co-Executrix Lori Rappaport LaCroix and Sylvia Rappaport: May 10, 2004.

Statement of Answer filed by Respondents on or about: September 17, 2004.

Respondent MSDW signed the Uniform Submission Agreement: July 21, 2004.

Respondent McGrath signed the Uniform Submission Agreement: September 10, 2004.

Respondent Berger signed the Uniform Submission Agreement: September 28, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty; violation of Rule 10b-5 of the Securities Exchange Act of 1934; violation of the NASD "Know Your Customer" rule; controlling person liability; breach of contract; and negligence. The causes of action relate to purchases of unspecified securities including technology stocks in Claimant's account.

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

### **RELIEF REQUESTED**

Claimant requested compensatory damages of \$500,000.00, punitive damages of \$500,000.00, plus attorney's fees, costs, and any and all other relief, both at law and equity, to which the Claimant may appear entitled.

Respondents requested that Claimant's claims be denied in their entirety.

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

During the conclusion of the evidentiary hearing on May 27, 2005, Respondents requested that all references to this matter be expunged from the NASD Central Registration Depository ("CRD") records of Respondents Berger and McGrath.

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, and the post-hearing submissions (if any), the undersigned arbitrators (the "Panel") have 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 Panel recommends the expungement of all references to the above captioned arbitration from Respondent McGrath's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-16, Respondent McGrath must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.
4. Pursuant to Rule 2130 of the NASD Code of Arbitration Procedure, the arbitration panel has made the following affirmative findings of fact: The claim, allegation, or information is false.
5. Respondent Berger's request for expungement is denied.
6. Any and all claims for relief not specifically addressed herein, including Claimant's requests for punitive damages and attorney's fees, are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedures (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 = \$ 375.00

**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 persons at the time of the events giving rise to the dispute. Accordingly, MSDW is a member firm and a party.

Member surcharge	= \$ 2,250.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$ 4,000.00</u>
Total Member Fees	= \$ 7,000.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

May 17 through 20, 2005 hearing dates, adjournment requested by Respondents. The Panel waived the \$1,200.00 adjournment fee.

**Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No three-day cancellation fees were incurred in this matter.

**Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were incurred in this matter.

**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:

Two (2) Pre-hearing sessions with the Panel @ \$1,200.00	= \$ 2,400.00
Pre-hearing conferences: January 12, 2005 1 session	
April 18, 2005 1 session	
Eight (8) Hearing sessions with the Panel @ \$1,200.00	= \$ 9,600.00
Hearing Dates: May 24, 2005 2 sessions	
May 25, 2005 2 sessions	
May 26, 2005 2 sessions	
May 27, 2005 2 sessions	
Total Forum Fees	= \$12,000.00

1. The Panel has assessed \$6,000.00 of the forum fees to Claimant.
2. The Panel has assessed \$6,000.00 of the forum fees to Respondent MSDW.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred in this matter.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 6,000.00
Total Fees	= \$ 6,375.00
Less payments	= \$ 1,575.00
Balance Due NASD Dispute Resolution	= \$ 4,800.00

2. Respondent MSDW is solely liable for:

Member Fees	= \$ 7,000.00
Forum Fees	= \$ 6,000.00
Total Fees	= \$ 13,000.00
Less payments	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$ 6,000.00

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

**ARBITRATION PANEL**

Perry Phillips	-	Public Arbitrator, Presiding Chairperson
Allan P. Wilson	-	Public Arbitrator
A. George Saks, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
/s/  
Perry Phillips  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
/s/  
Allan P. Wilson  
Public Arbitrator

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

/s/

A. George Saks, Esq.  
Non-Public Arbitrator

Signature Date

June 6, 2005

Date of Service (For NASD Dispute Resolution use only)

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Allan P. Wilson	-	Public Arbitrator
A. George Saks, Esq.	-	Non-Public Arbitrator

  
Consenting Arbitrators' Signatures

  
Perry Phillips  
Public Arbitrator, Presiding Chairperson

6/03/05

6/03/05  
Signature Date

Allan P. Wilson  
Public Arbitrator

Signature Date

NASD Dispute Resolution  
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**Concurring Arbitrators' Signatures**

Perry Phillips  
 Public Arbitrator, Presiding Chairperson

Signature Date



Allan P. Wilson  
 Public Arbitrator

6/6/05  
 Signature Date

Jun 04

Jun

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A. George Saks, Esq.  
Non-Public Arbitrator

6/3/05  
Signature Date

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