

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Names of Claimants

The Helen J. Anderson Trust, by its Trustees,  
Helen J. Anderson and Enid M. Cichowski

and

Case Number: 04-03003  
Hearing Site: Chicago, Illinois

Names of Respondents

Morgan Stanley DW, Inc., and  
Robert L. Foersterling

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**NATURE OF DISPUTE**

Customers v. Member Firm and Associated Person

**REPRESENTATION OF PARTIES**

The Helen J. Anderson Trust, by its Trustees, Helen J. Anderson and Enid M. Cichowski ("Claimants") were represented by W. Scott Greco, Esq., Greco & Greco, P.C., McLean, Virginia.

Morgan Stanley DW, Inc. ("MSDW") and Robert L. Foersterling ("Foersterling"), hereinafter collectively referred to as "Respondents," were represented by Jeanine M. Larrea, Esq., Morgan Stanley DW, Inc., San Francisco, California.

**CASE INFORMATION**

The Statement of Claim was filed on or about April 23, 2004. The Submission Agreement of Claimants, The Helen J. Anderson Trust, by its Trustees, Helen J. Anderson and Enid M. Cichowski, was signed on or about April 23, 2004. Claimants Response to Respondents' Motion for Partial Dismissal was filed on or about August 9, 2004.

A Motion for Partial Dismissal of Claim and the Statement of Answer was filed jointly by Respondents, Morgan Stanley DW, Inc., and Robert L. Foersterling, on or about July 9, 2004. The Submission Agreement of Respondent, Morgan Stanley DW, Inc., was signed on or about June 14, 2004. The Submission Agreement of Respondent, Robert L. Foersterling, was signed on or about August 9, 2004. Respondents' Reply in Support of their Motion for Partial Dismissal was filed on or about August 16, 2004.

### **CASE SUMMARY**

Claimants asserted the following causes of action: breach of contract, negligence, failure to supervise, breach of fiduciary duty, misrepresentation, omission of facts and suitability. The causes of action related to the recommendation and purchase of various unspecified securities. Claimants alleged that Respondents invested the vast majority of the account in more risky stocks and aggressive growth funds. By August 2000, the account was invested almost 87% in stocks, of which 63% was in individual equities and 24% was in four mutual funds. Claimants alleged that Respondents did not diversify their account, and that Claimant, Helen Anderson, is an elderly widow whose objectives were income and preservation of capital.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimants ordered, approved, participated in or ratified, the acts and transactions in dispute and this are barred under the doctrines of waiver, estoppel, and ratification; the diminution in value of Claimants' investments was caused in whole or in part by unprecedented market declines; the claims are barred as a result of Claimants' failure to mitigate damages; Claimants failed to use the requisite due diligence in monitoring, managing and handling the investments in their accounts; and Claimants knowingly, willingly and voluntarily assumed the risk of any alleged harm of which they now complain.

### **RELIEF REQUESTED**

Claimants requested an award in the amount of:

Actual/Compensatory Damages	\$305,000.00
Punitive/Exemplary Damages	\$610,000.00
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs, attorneys' fees, and that this matter be expunged from the CRD record of Respondent, Robert L. Foersterling.

### **OTHER ISSUES CONSIDERED & DECIDED**

Pursuant to Rule 2130, the arbitration panel has made the following affirmative findings of fact:

The claim, allegation, or information is clearly erroneous.

Unless NASD specifically waives this requirement in writing, 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.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Respondent, Morgan Stanley DW, Inc., is liable for and shall pay to Claimants, The Helen J. Anderson Trust, by its Trustees, Helen J. Anderson and Enid M. Cichowski, the sum of \$10,000.00 in compensatory damages;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 3.) The panel recommends the expungement of all reference to the above captioned arbitration from Respondent, Robert L. Foersterling's, registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent, Robert L. Foersterling, must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive; and
- 4.) Any relief not specifically enumerated, including punitive damages and attorneys' fees, is hereby denied with prejudice.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain the non-refundable filing fee 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 person at the time of the events giving rise to the dispute. In this matter, the member firm is Morgan Stanley DW, Inc.

Member surcharge	= \$ 2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 4,000.00

### **Forum Fees and Assessments**

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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 x \$1,200.00	= \$ 1,200.00
Pre-hearing conference: October 14, 2004	1 session
Six (6) Hearing sessions x \$1,200.00	= \$ 7,200.00
Hearing Dates: August 16, 2005	2 sessions
August 17, 2005	2 sessions
August 18, 2005	2 sessions
Total Forum Fees	= \$ 8,400.00

The Arbitration Panel has assessed \$8,400.00 of the forum fees to Morgan Stanley DW, Inc.

### **Fee Summary**

Claimants, The Helen J. Anderson Trust, by its Trustees, Helen J. Anderson and Enid M. Cichowski, are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
Total Fees	= \$ 375.00
Less payments	= \$ 1,575.00
Refund Due to Claimants	= \$ 1,200.00

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

Member Fees	= \$ 7,000.00
Forum Fees	= \$ 8,400.00
Total Fees	= \$ 15,400.00
Less payments	= \$ 7,200.00

Balance Due NASD Dispute Resolution

= \$ 8,200.00

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

**ARBITRATION PANEL**

Joseph O. Kostner, Esq. - Public Arbitrator, Presiding Chair  
Ralph M. Goren, Esq. - Public Arbitrator  
Barbara A. Mallon, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

Joseph O. Kostner, Esq.  
Public Arbitrator, Presiding Chair

Signature Date

/s/ Ralph M. Goren, Esq.  
Ralph M. Goren, Esq.  
Public Arbitrator

October 10, 2005  
Signature Date

/s/ Barbara A. Mallon, Esq.  
Barbara A. Mallon, Esq.  
Non-Public Arbitrator

October 10, 2005  
Signature Date

October 11, 2005  
Date of Service (For NASD office use only)

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Ralph M. Goren, Esq.  
Public Arbitrator

Barbara A. Mallon, Esq.  
Non-Public Arbitrator

Signature Date

10.10.04

Signature Date

Signature Date

Date of Service (For NASD office use only)

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