

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

---

In the Matter of the Arbitration Between

Name of Claimant

Doris M. Lener as Trustee of The Doris M. Lener Living Trust

and

04-03211  
Phoenix, Arizona

Name of Respondents

Morgan Stanley DW Inc.  
Edward G. Dulin, Jr.

---

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

**REPRESENTATION OF PARTIES**

Doris M. Lener as Trustee of The Doris M. Lener Living Trust ("**Claimant**") was represented by Mark D. Chester, Esq., Chester & Shein, P.C., Scottsdale, Arizona.

---

Morgan Stanley DW Inc. ("**Respondent**") and Edward G. Dulin, Jr. ("**Respondent Dulin**") hereinafter referred to as ("**Respondents**") were represented by Ronald E. Wood, Esq., The Wood Group Los Angeles, California.

Respondent Dulin was also represented by Jesse B. Simpson, Esq., Lewis and Roca, LLP, Phoenix, Arizona.

**CASE INFORMATION**

The Statement of Claim was filed on or about April 30, 2004. Claimant's Response to Respondents' Motion to Dismiss was filed on or about December 3, 2004. Submission Agreement of Claimant Doris M. Lener as Trustee of The Doris M. Lener Living Trust was signed on December 9, 2003.

Statement of Answer and Motion to Dismiss was filed by Respondent Morgan Stanley DW Inc. and Edward G. Dulin, Jr. on or about July 15, 2004. Respondents' Reply Brief in Support of Their Motion to Dismiss was filed on or about December 13, 2004. Submission Agreement of Respondent Morgan Stanley DW Inc. was signed on July 14, 2004. Submission Agreement of Respondent Edward G. Dulin, Jr. was signed on July 29, 2004.

### **CASE SUMMARY**

Claimant asserted the following causes of action: Arizona Securities fraud – misrepresentations and omissions; suitability violations; negligent misrepresentation; breach of contract; professional negligence; breach of fiduciary duties; negligent supervision; and common law fraud. It was specifically alleged that:

It was initially a moderate portfolio of common stock, bond mutual funds, preferred stock, unit investment trusts and municipal bonds, all of which generated substantial income, a portion of which was tax exempt. Then, inexplicably, respondent broker Edward Dulin turned the portfolio into an aggressive option strategy trading account which miserably failed. This trading strategy caused short-term losses in excess of \$400,000, and generated substantial fees and commissions. Specifically, there were over 35 transactions and a complete rotation of holdings in a period of three months.

The losses suffered by Ms. Lener arise out of recommendations by her broker and, in part, through MSDW's failure to monitor or supervise the unsuitable trading and overall portfolio strategy in the Lener account.

---

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated

While it is undisputed that Claimant is 65 years old and, regrettably, widowed, she is far from the inexperienced and conservative investor her Claim asserts. In the Spring of 2000, Claimant increased the assets in her Morgan Stanley account in issue by transferring in positions she had maintained at Salomon Smith Barney. As the evidence will show, Claimant was unsatisfied with the meager returns her Salomon Smith Barney investments generated and wanted something more. After all, by this time Claimant had maintained an account at yet another broker-dealer, Olde Discount, in which she owned large and highly profitably positions in, on information and belief, Amazon, Cisco, Dell, Helix Technology, Intel, Micron Tech, Oracle and Sun Microsystems.

Flush with substantial gains on these investments, Claimant rejected Mr. Dulin's recommendation in the Spring of 2000 that she invest her Salomon Smith Barney proceeds into a diverse bundle of primarily old economy stocks, such as, Allstate, Waste Management, Dupont, Kellogg, Bristol Myers, First Union, Texaco, J.C. Penny and Goodyear Tire, among others. Although her Claim ignores it, Claimant cannot sidestep the fact that she received and rejected these recommendations. That is because Mr. Dulin put the recommendations in writing before presenting them to Claimant (citation omitted). Rather than invest in these old economy stocks, Claimant directed Mr. Dulin to confine his recommendations to more

aggressive growth stocks which Mr. Dulin later did and which Claimant now, in hindsight, improperly asserts were unsuitable

In addition, Respondents stated:

Moreover, despite her outrageous assertions that her Morgan Stanley Financial Advisor, Mr. Dulin, supposedly manipulated and misled her and even, according to the Claim, improperly used inside information, Claimant has remained Mr. Dulin's client through today at UBS PaineWebber. Indeed, it is undisputed that Claimant transferred the Morgan Stanley account in issue to Mr. Dulin's new employer, UBS PaineWebber, almost four years ago, on December 14, 2000.

### **RELIEF REQUESTED**

Claimant requested an award as follows: compensatory damages equal to the trading losses, commissions and fees paid, and the margin interest incurred; post-award interest of 10% per annum; and reimbursement of her legal fees and costs. In addition, Claimant requested an award of punitive damages. Claimant estimated that her compensatory losses and punitive damage claims is in excess of \$400,000.00 and less than \$750,000.00.

---

Respondents requested that the claims asserted against them be denied in their entirety; that the Arbitration Panel enter an award in their favor, and that this matter be expunged from Mr. Dulin's CRD record.

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

By letter dated December 14, 2004, the parties were advised of the Arbitration Panel's decision on the outstanding Motion to Dismiss as follows:

The Panel convened to consider the above Motion and concluded that it could not properly rule on this matter until it has had the opportunity to hear, review and evaluate the credibility of the testimony supporting and refuting the triggering of the Arizona Statute of Limitations. The Panel will reserve judgement [sic] on the Motion and allow testimony on the Statute of Limitations applicability along with evidence on the merits of the Claim and Decide when appropriate. Unless there are other unresolved issues which require direction from the Panel, it would not appear to be necessary to hold the hearing tentatively scheduled for December 20, 2004.

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 the NASD Dispute Resolution (the "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) The claims asserted in this matter are dismissed in their entirety.
- 2) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Edward G. Dulin, Jr.'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 Edward G. Dulin, Jr. 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. Pursuant to Rule 2130, the Arbitration Panel has made the following affirmative findings of fact:
  - a) Respondent Edward G. Dulin, Jr. did not engage in the alleged fraudulent or improper sales activities.
- 4) That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
- 5) Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees, not specifically awarded or otherwise provided for above.

### **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 = \$375.00

### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is Morgan Stanley DW Inc.

Member surcharge	\$	2,250.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	4,000.00
Total Member Fees	\$	7,000.00

### **Adjournment Fees**

Adjournments requested during these proceedings:

Hearing Date(s), April 12-14, 2005 adjournment requested by parties to = \$1,200.00 mediate. Fee waived.

### **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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

1 Pre-hearing session(s) with Panel	x	1,200.00	\$	1,200.00
November 8, 2004	1	session		
9 Hearing sessions	x	1,200.00	\$	10,800.00
June 27, 2006	2	sessions		
June 28, 2006	2	sessions		
June 29, 2006	3	sessions		
June 30, 2006	2	sessions		
Total Forum Fees			\$	12,000.00

The Arbitration Panel has assessed \$6,000.00 of the forum fees to Doris M. Lener as Trustee of The Doris M. Lener Living Trust.

The Arbitration Panel has assessed \$6,000.00 of the forum fees jointly and severally to Morgan Stanley DW Inc. and Edward G. Dulin, Jr.

### **Fee Summary**

Claimant, Doris M. Lener as Trustee of The Doris M. Lener Living Trust, is liable for:

NASD Dispute Resolution  
Arbitration No. 04-03211  
Award Page 6 of 7

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

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

Member Fees	= \$	7,000.00
Total Fees	= \$	7,000.00
Less payments	= \$	-8,562.50
Balance applied to fees below	= \$	-1,562.50

Respondents, Morgan Stanley DW Inc. and Edward G. Dulin, Jr., are jointly and severally liable for:

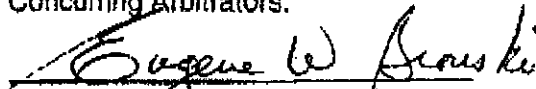
Forum Fees	= \$	6,000.00
Total Fees	= \$	6,000.00
Less payments	= \$	-1,562.50
Balance Due NASD Dispute Resolution	= \$	4,437.50

All balances are due to NASD Dispute Resolution

**ARBITRATION PANEL**

Eugene W. Bronski, Esq. - Public Arbitrator, Presiding Chair  
John A. Finical - Public Arbitrator  
Karen D. Hanson - Non-Public Arbitrator

Concurring Arbitrators:

  
Eugene W. Bronski, Esq.  
Public Arbitrator, Presiding Chair

7-7-06  
Signature Date

\_\_\_\_\_  
John A. Finical  
Public Arbitrator

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

\_\_\_\_\_  
Karen D. Hanson  
Non-Public Arbitrator

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

NASD Dispute Resolution  
Arbitration No. 04-09211  
Award Page 6 of 7

Initial Filing Fee	\$	375.00
Forum Fees	\$	8,000.00
Total Fees	\$	8,375.00
Less payments	\$	-1,575.00
Balance Due NASD Dispute Resolution	\$	4,800.00

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

Member Fees	\$	7,000.00
Total Fees	\$	7,000.00
Less payments	\$	-8,562.50
Balance applied to fees below	\$	-1,562.50

Respondents, Morgan Stanley DW Inc. and Edward G. Dulin, Jr., are jointly and severally liable for:

Forum Fees	\$	8,000.00
Total Fees	\$	8,000.00
Less payments	\$	-1,562.50
Balance Due NASD Dispute Resolution	\$	4,437.50

All balances are due to NASD Dispute Resolution

#### ARBITRATION PANEL

Eugene W. Bronski, Esq. - Public Arbitrator, Presiding Chair  
John A. Fincoel - Public Arbitrator  
Karen D. Hanson - Non-Public Arbitrator

Concurring Arbitrators:

Eugene W. Bronski, Esq.  
Public Arbitrator, Presiding Chair

*John A. Fincoel*  
John A. Fincoel  
Public Arbitrator

Signature D. to

*7/06/06*  
Signature D. to

Karen D. Hanson  
Non-Public Arbitrator

Signature D. to

NASD Dispute Resolution  
Arbitration No. 04-03211  
Award Page 6 of 7

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

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

Member Fees	= \$	7,000.00
Total Fees	= \$	7,000.00
<u>Less payments</u>	= \$	-8,562.50
Balance applied to fees below	= \$	-1,562.50

Respondents, Morgan Stanley DW Inc. and Edward G. Dulin, Jr., are jointly and severally liable for:

<u>Forum Fees</u>	= \$	6,000.00
Total Fees	= \$	6,000.00
<u>Less payments</u>	= \$	-1,562.50
Balance Due NASD Dispute Resolution	= \$	4,437.50

All balances are due to NASD Dispute Resolution

**ARBITRATION PANEL**

Eugene W. Bronski, Esq. - Public Arbitrator, Presiding Chair  
John A. Finical - Public Arbitrator  
Karen D. Hanson - Non-Public Arbitrator

Concurring Arbitrators:

\_\_\_\_\_  
Eugene W. Bronski, Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
John A. Finical  
Public Arbitrator

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

  
\_\_\_\_\_  
Karen D. Hanson  
Non-Public Arbitrator

7-11-06  
\_\_\_\_\_  
Signature Date



NASD Dispute Resolution  
Arbitration No. 04-03211  
Award Page 7 of 7