

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

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In the Matter of the Arbitration Between

Name of Claimant

Barbara K. Sader

and

04-03554

Overland Park, Kansas

Name of Respondents

Morgan Stanley DW Inc.  
Noel Carino

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

**REPRESENTATION OF PARTIES**

Barbara K. Sader ("**Claimant**") was represented by Robert R. Barton, Esq., The Law Office of Robert R. Barton, LLC, Overland Park, Kansas.

Morgan Stanley DW Inc. ("**Respondent MSDW**") and Noel Carino ("**Respondent Carino**") hereinafter referred to as ("**Respondents**") were represented by Harrison Kaufman, Esq., Morgan Stanley DW Inc., New York, New York.

**CASE INFORMATION**

The Statement of Claim was filed on or about May 17, 2004. Submission Agreement of Claimant Barbara K. Sader was signed on May 7, 2004.

Statement of Answer was filed by Respondents Morgan Stanley DW Inc. and Noel Carino on or about August 25, 2004.

**CASE SUMMARY**

Claimant summarized her claim as follows:

Barbara Sader is a 55 year old elementary school teacher. Her husband, Ken, 61, has been disabled since 1990. Respondent Noel Carino, a Morgan Stanley broker, told Mrs. Sader that she should sell her corporate bonds and a mutual fund and use the proceeds to purchase a variable annuity. Since MSDW represents itself and its brokers as experts, she followed this advice. As a result, Mrs. Sader incurred significant financial losses.

Claimant specifically alleged that:

1. Carino recommended and sold a wholly unsuitable security;
2. Carino failed to sell the remainder of a wholly unsuitable growth mutual fund;
3. Carino failed to inform Mrs. Sader of material facts about variable annuity and the risks of continuing to hold the growth mutual fund;
4. MSDW breached its duties by approving the sale of the bonds, the purchase of the variable annuity, and by failing to advise of the risks of continuing to hold the growth mutual fund; MSDW failed to supervise Carino, particularly in these respects:
  - a. It failed to question and disapprove the aforementioned trades;
  - b. It failed to ensure that Carino managed the accounts in accordance with the industry rules and regulations; and
  - c. By (apparently) not reviewing the accounts to see that the management was in accordance with the needs, objectives, and risk tolerance of Mrs. Sader.

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

This claim unjustifiably seeks to recover losses for which Morgan Stanley and Noel Carino bear no liability. The claims for which Claimant bases her relief are unsubstantiated by the record of events and transactions within the account. During the relevant time period, Morgan Stanley and Noel Carino at all times acted in accordance with all applicable brokerage industry standards and guidelines and all regulatory requirements.

#### **RELIEF REQUESTED**

Claimant requested an award in her favor and against Carino and MSDW, jointly and severally, as follows:

1. For her actual, compensatory, and consequential damages;
2. For punitive damages in an amount of not less than \$50,000 each to punish them for their wrongful conduct and to deter them and others from engaging in such conduct in the future;
3. For all commissions, fees, and compensation she paid to Respondents;
4. For all costs of this action, including expert witness fees;
5. For her reasonable attorneys' fees incurred in pursuing this action;
6. For all interest as provided by law; and
7. For such other and further relief as the panel deems just and proper.

Respondents requested that the Statement of Claim be dismissed in its entirety and that they be awarded their costs and attorneys' fees.

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

Respondents Morgan Stanley DW Inc. and Noel Carino did not file with the NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing are bound by the determination of the arbitration panel on all issues submitted.

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. Respondent Morgan Stanley DW Inc. is liable for and shall pay to Claimant Barbara K. Sader the sum of \$15,000.00 (**Fifteen Thousand Dollars and No Cents**) as compensatory damages.
2. Respondent Morgan Stanley DW Inc. is liable for and shall pay to Claimant Barbara K. Sader the sum of \$5,000.00 (**Five Thousand Dollars and No Cents**) as attorney's fees.
3. Interest at the rate of 8% per annum is awarded on the above stated sum from and inclusive of May 23, 2002 to and inclusive of the date this award is paid in full.
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 = \$225.00

**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	\$	1,100.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	1,700.00
Total Member Fees	\$	3,550.00

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

2 Pre-hearing session(s) with Panel	x	750.00	\$	1,500.00
November 1, 2004	1	session		
November 8, 2004	1	session		
2 Hearing sessions	x	750.00	\$	1,500.00
June 21, 2005	2	sessions		
Total Forum Fees			\$	3,000.00

The Arbitration Panel has assessed \$3,000.00 of the forum fees to Morgan Stanley DW Inc.

**Fee Summary**

Claimant, Barbara K. Sader, shall be and hereby is liable for:

Initial Filing Fee	= \$	225.00
Total Fees	= \$	225.00
<u>Less payments</u>	= \$	-975.00
Balance to be refunded by NASD Dispute Resolution	= \$	- 750.00

Respondent, Morgan Stanley DW Inc., shall be and hereby is liable for:

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Member Fees	= \$	3,550.00
<u>Forum Fees</u>	= \$	3,000.00
Total Fees	= \$	6,550.00
<u>Less payments</u>	= \$	-3,550.00
Balance Due NASD Dispute Resolution	= \$	3,000.00

**All balances are due to NASD Dispute Resolution**

**ARBITRATION PANEL**

Lawrence R. Rute - Public Arbitrator, Presiding Chair  
Michael A. Kleinman, J.D. - Public Arbitrator  
Jerry L. Kaempfe - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Lawrence R. Rute  
Lawrence R. Rute  
Public Arbitrator, Presiding Chair

August 8, 2005  
Signature Date

/s/ Michael A. Kleinman  
Michael A. Kleinman, J.D.  
Public Arbitrator

July 28, 2005  
Signature Date

/s/ Jerry L. Kaempfe  
Jerry L. Kaempfe  
Non-Public Arbitrator

July 28, 2005  
Signature Date

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Date of Service (For NASD office use only)

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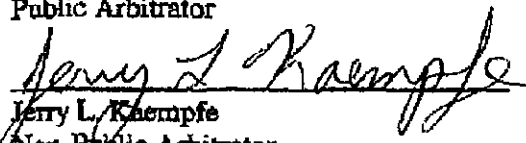
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7-28-2005  
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