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

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In the Matter of the Arbitration Between:

Names of the Claimants  
Robert and Betty Sprague  
Mary McKinney  
Dorothy Knox  
Dorothy C. Gervasi  
William Harper

Case Number: 04-03714

Name of the Respondent  
Morgan Stanley DW, Inc.

Hearing Site: Memphis, TN

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

For, Robert and Betty Sprague, Mary McKinney, Dorothy Knox, Dorothy C. Gervasi, and William Harper, hereinafter collectively referred to as "Claimants": H. Naill Falls, Jr., Esq., Falls & Veach, Nashville, TN.

For Morgan Stanley DW, Inc. ("MSDW"), hereinafter referred to as "Respondent": James F. Sanders, Esq., Neal & Harwell, PLC, Nashville, TN.

**CASE INFORMATION**

Statement of Claim filed on or about: May 24, 2004.

Claimant Robert Sprague signed the Uniform Submission Agreement: May 17, 2004.

Claimant Betty Sprague signed the Uniform Submission Agreement: May 17, 2004.

Claimant Mary McKinney signed the Uniform Submission Agreement: May 15, 2004.

Claimant Dorothy Knox signed the Uniform Submission Agreement: May 19, 2004.

Claimant Dorothy C. Gervasi signed the Uniform Submission Agreement: May 16, 2004.

Claimant William Harper signed the Uniform Submission Agreement: May 19, 2004.

Answer of Respondent Morgan Stanley DW, Inc. filed on or about: September 3, 2004.

Respondent signed the Uniform Submission Agreement: August 16, 2004.

Respondent's Motion to Strike Class B Claims filed on or about February 22, 2005.

Respondent's Motion For Severance of Claims filed on or about February 22, 2005.

**CASE SUMMARY**

Claimants asserted the following causes of action: unsuitability; failure to disclose material facts; reckless and negligent advice; breach of contractual duty; breach of fiduciary duty; negligence; common law fraud; respondeat superior; and, violation of state and federal securities laws and the common law of Tennessee. The causes of action relate to the purchase of the Morgan Stanley High Yield Fund, Morgan Stanley Diversified Income Fund, Morgan Stanley American Value Fund, Morgan Stanley Information Fund, Morgan Stanley Aggressive Equity Fund,

Morgan Stanley Strategist Fund, Morgan Stanley 21<sup>st</sup> Century Trend Fund, Morgan Stanley Information Fund, Morgan Stanley Mid-Cap Equity Fund, Morgan Stanley International Equity Fund, Morgan Stanley Total Market Index Fund, Morgan Stanley American Opportunity Fund, and the Van Kampen Technology Fund in Claimants' accounts.

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

### **RELIEF REQUESTED**

Claimants requested unspecified compensatory damages, pre-judgment interest, attorneys' fees, punitive damages, and such further relief as the undersigned arbitrators (the "Panel") deemed to be just and proper.

Respondent requested dismissal of the Statement of Claim and such other and further relief to which it may be entitled.

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

On or about March 11, 2005, the Panel issued an order which denied Respondent's Motion to Strike Class B Claims and Respondent's Motion For Severance of Claims.

On or about May, 2005, Claimant Knox advised NASD Dispute Resolution that she had settled all of her claims against Respondent MSDW.

On or about November, 2005, Claimant Harper advised NASD Dispute Resolution that he had settled all of his claims against Respondent MSDW.

The parties present at the hearing agreed that a handwritten, signed Award may be entered in this matter.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

The Panel finds that Claimants Robert and Betty Sprague, Mary McKinney, and Dorothy C. Gervasi have carried their burden of proof against Respondent MSDW on their common law claims and awards the following to be paid by Respondent MSDW:

\$30,000.00 to Robert Sprague;  
\$22,500.00 to Betty Sprague;  
\$30,000.00 to Mary McKinney; and,  
\$20,000.00 to Dorothy C. Gervasi.

Any and all claims for relief not specifically addressed herein, including Claimants' request for punitive damages and pre-judgment interest and Claimants' claims under the Federal and Tennessee Securities Acts, are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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 = \$ 250.00

#### **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. Accordingly, Respondent MSDW is a member firm and party.

Member surcharge = \$1,500.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$2,200.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments granted for which fees were assessed in this matter.

#### **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 assessed during these proceedings.

#### **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 assessed during these proceedings.

#### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A 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:

Three (3) Pre-hearing sessions with the Panel @ \$1,000.00/session = \$3,000.00

Pre-hearing conferences:	November 19, 2004	1 session
	March 11, 2005	1 session
	June 17, 2005	1 session

Four (4) Hearing sessions @ \$1,000.00/session		= \$4,000.00
Hearing Dates:	November 14, 2005	2 sessions
	November 15, 2005	2 sessions

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Total Forum Fees		= \$7,000.00
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The Panel has assessed the total forum fees of \$7,000.00 to Respondent.

**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 during these proceedings.

**Fee Summary**

Claimants are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 250.00
<u>Total Fees</u>	= \$ 250.00
<u>Less payments</u>	= \$ 250.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent is solely liable for:

Member Fees	= \$ 4,450.00
<u>Forum Fees</u>	= \$ 7,000.00
<u>Total Fees</u>	= \$11,450.00
<u>Less payments</u>	= \$ 4,450.00
Balance Due NASD Dispute Resolution	= \$ 7,000.00

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

**ARBITRATION PANEL**

Robert J. Warner, Jr., LLB	-	Public Arbitrator, Presiding Chairperson
Fred M. Ridolphi, Esq.	-	Public Arbitrator
George A. Sawyer	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
/s/  
Robert J. Warner, Jr., LLB  
Public Arbitrator, Presiding Chairperson

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

/s/

Fred M. Ridolphi, Esq.  
Public Arbitrator

Signature Date

/s/

George A. Sawyer  
Non-Public Arbitrator

Signature Date

November 21, 2005

Date of Service (For NASD Dispute Resolution use only)

**NASD Dispute Resolution****Arbitration No. 04-03714****Award Page 4 of 5**

Four (4) Hearing sessions @ \$1,000.00/session		= \$4,000.00
Hearing Dates:	November 14, 2005	2 sessions
	November 15, 2005	2 sessions

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<b>Total Forum Fees</b>		<b>= \$7,000.00</b>
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<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

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Robert J. Warner, Jr., LLB  
 Fred M. Ridolphi, Esq.  
 George A. Sawyer

- Public Arbitrator, Presiding Chairperson  
 - Public Arbitrator  
 - Non-Public Arbitrator

**Concurring Arbitrators' Signatures**


Robert J. Warner, Jr., LLB  
 Public Arbitrator, Presiding Chairperson

11/18/05  
 Signature Date

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Nov. 18, 2005 1:47AM

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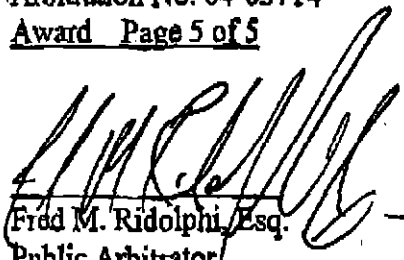
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NASD Dispute Resolution

Arbitration No. 04-03714

Award Page 5 of 5

  
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Public Arbitrator

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George A. Sawyer  
Non-Public Arbitrator

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**Award Page 5 of 5**

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George A. Sawyer

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Signature Date

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Signature Date

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