

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

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In the Matter of the Arbitration Between

Names of Claimants

Margaret Jan Kemp IRA Rollover  
and Margaret Jan Kemp as Trustee  
under the Margaret Jan Owens Kemp Trust

and

Case Number: 04-04246  
Hearing Site: Houston, Texas

Names of Respondents

Morgan Stanley DW, Inc., and  
Ronnie Lee Houston

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**NATURE OF DISPUTE**

Customers v. Member Firm and Associated Person

**REPRESENTATION OF PARTIES**

Margaret Jan Kemp IRA Rollover and Margaret Jan Kemp as Trustee under the Margaret Jan Owens Kemp Trust ("**Claimants**") were represented by Frank V. Ghiselli, Esq., and Winston E. Cochran, Jr., Esq., Houston, Texas.

Morgan Stanley DW, Inc. ("**MSDW**") and Ronnie Lee Houston ("**Houston**"), hereinafter collectively referred to as "**Respondents**," were represented by Deborah R. Volland, Esq., Morgan Stanley DW, Inc., San Francisco, California.

**CASE INFORMATION**

The Statement of Claim was filed on or about June 16, 2004. The Submission Agreement of Claimants, Margaret Jan Kemp IRA Rollover and Margaret Jan Kemp as Trustee under the Margaret Jan Owens Kemp Trust, was signed on or about June 10, 2004.

The Joint Statement of Answer was filed by Respondents, Morgan Stanley DW, Inc. and Ronnie Lee Houston, on or about August 23, 2004. The Submission Agreement of Respondent, Morgan Stanley DW, Inc., was signed on or about August 4, 2004. The Submission Agreement of Respondent, Ronnie Lee Houston, was signed on or about July 23, 2004.

### **CASE SUMMARY**

Claimants asserted the following causes of action: breach of contract, failure to supervise, breach of fiduciary duty, misrepresentations, negligence, omissions of facts and suitability. The causes of action related to losses in the IRA Rollover Account of Margaret Jan Owens Kemp and in the account of the Margaret Jan Owens Kemp Trust. In 1991, Ms. Kemp suffered a severe mental breakdown, she was hospitalized, and her son Jeffrey was appointed guardian of her person and estate. By 1996, Ms. Kemp's mental health had improved somewhat. Because the court supervised guardianship was cumbersome and expensive to administer, the guardianship was closed and the Margaret Jan Owens Kemp Trust was established for her benefit. Ms. Kemp, her son Jeffrey, and her daughter Kayna were named trustees of the trust.

In early 2000, Ms. Kemp became concerned about losses that were occurring in her brokerage accounts at Merrill Lynch and decided to make a change. Ms. Kemp and her son Jeffrey had a series of meetings/conversations with Morgan Stanley DW ("MSDW") representatives, some of which included the Branch Manager. Among other things, Ms. Kemp and her son told the MSDW representatives that she was 67 years old and disabled because of debilitating mental health. They were told that they were concerned about recent losses in the Merrill Lynch accounts and wanted safe investments. Claimant alleged that neither Ms. Kemp nor her son were sophisticated investors, and they relied on MSDW to recommend safe investments. The MSDW "team," which included "Retirement Planning Specialist" Ronnie Houston, two other brokers, and the Branch Manager, provided Investment Consulting Services and made recommendations to Ms. Kemp and her son. Based on these recommendations which initially included about 80% equities, in June 2000, the trustees opened a brokerage account with MSDW and transferred assets valued at \$477,074. They also opened the IRA Rollover Account with MSDW by transferring cash in the amount of \$148,020.

By March 2001, Ms. Kemp's accounts had declined in value substantially. While the overall market was declining during this time period, Ms. Kemp's losses far exceeded losses of a properly balanced portfolio of 50% equities and 50% fixed income securities. Claimants alleged that the investments recommended by MSDW were not suitable for Ms. Kemp. MSDW owed a duty of reasonable care to Claimants and breached that duty by not disclosing the risks associated with the MSDW mutual funds and other stocks when the accounts were opened. Furthermore, Claimants alleged that the accounts were weighted too heavily in risky equities.

Claimants also alleged that Respondents breached their fiduciary duties to and contract with Claimants and violated the Texas Securities Act, Deceptive Trade Practices Act, and Business & Commerce Code. They sought recovery of actual and punitive damages, statutorily enhanced damages, attorneys' fees, expert witness fees, costs, as well as pre and post judgment interest.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following:

The accounts in question were nondiscretionary accounts; Ms. Kemp and her son, who is a lawyer, indicated that they wanted growth and income; Claimants did not request conservative investments; their accounts at Merrill Lynch were similar in risk and allocation to the assets recommended by MSDW; when the Claimants' assets were subsequently transferred from MSDW to another broker, the risk and allocation chosen by Claimants were similar to the risk and allocation recommended by MSDW; the Claimants knew or should have known of all risks, which were disclosed in prospectuses given to Claimants; Claimants did not timely complain of the allocation and risks associated with their accounts and thus ratified the transactions; Claimants failed to take steps to timely mitigate their damages, if any, and Claimants' losses occurred as a result of market conditions, not any action or inaction of MSDW.

### **RELIEF REQUESTED**

Claimants requested an award in the amount of:

|                             |              |
|-----------------------------|--------------|
| Actual/Compensatory Damages | \$216,952.00 |
| Punitive/Exemplary Damages  | \$400,000.00 |
| 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 expungement of these claims from Respondent Houston's CRD record.

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

The Panel recommends the expungement of these claims from the CRD record of Respondent Houston based on their findings that the claims against Ronnie Lee Houston were not meritorious.

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.) Claimants' claims, each and all, are hereby denied and dismissed with prejudice;

- 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, Ronnie Lee Houston's, registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Houston must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by 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; and

- 4.) Any relief not specifically enumerated, including punitive damages and attorney 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 8, 2005 1 session

Seven (7) Hearing sessions x \$1,200.00 = \$ 8,400.00  
Hearing Dates: June 27, 2005 2 sessions  
June 28, 2005 2 sessions  
June 29, 2005 2 sessions

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Total Forum Fees = \$ 9,600.00

The Arbitration Panel has assessed \$4,800.00 of the forum fees jointly and severally to Margaret Jan Kemp IRA Rollover and Margaret Jan Kemp as Trustee under the Margaret Jan Owens Kemp Trust.

The Arbitration Panel has assessed \$4,800.00 of the forum fees jointly and severally to Morgan Stanley DW, Inc. and Ronnie Lee Houston.

#### Fee Summary

Claimants, Margaret Jan Kemp IRA Rollover and Margaret Jan Kemp as Trustee under the Margaret Jan Owens Kemp Trust, are jointly and severally liable for:

|                                     |               |
|-------------------------------------|---------------|
| Initial Filing Fee                  | = \$ 375.00   |
| Forum Fees                          | = \$ 4,800.00 |
| Total Fees                          | = \$ 5,175.00 |
| Less payments                       | = \$ 1,575.00 |
| Balance Due NASD Dispute Resolution | = \$ 3,600.00 |

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

|                                     |               |
|-------------------------------------|---------------|
| Member Fees                         | = \$ 7,000.00 |
| Total Fees                          | = \$ 7,000.00 |
| Less payments                       | = \$ 7,000.00 |
| Balance Due NASD Dispute Resolution | = \$ 0.00     |

Respondents, Morgan Stanley DW, Inc. and Ronnie Lee Houston, are jointly and severally liable for:

|                                     |               |
|-------------------------------------|---------------|
| Forum Fees                          | = \$ 4,800.00 |
| Total Fees                          | = \$ 4,800.00 |
| Less payments                       | = \$ 1,250.00 |
| Balance Due NASD Dispute Resolution | = \$ 3,550.00 |

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

**ARBITRATION PANEL**

Donald K. Eckhardt, Esq. - Public Arbitrator, Presiding Chair  
David G. Beerbower, Esq. - Public Arbitrator  
Ruth Smith Jackson - Non-Public Arbitrator

Concurring Arbitrators:

/s/ David G. Beerbower, Esq.  
David G. Beerbower, Esq.  
Public Arbitrator

July 6, 2005  
Signature Date

/s/ Ruth Smith Jackson  
Ruth Smith Jackson  
Non-Public Arbitrator

July 6, 2005  
Signature Date

Arbitrator Concurring in Part; Dissenting in Part:

I dissent as to the dismissal of claims against Respondent, Morgan Stanley DW, Inc.  
and I concur as to all other determinations in this Award.

/s/ Donald K. Eckhardt, Esq.  
Donald K. Eckhardt, Esq.  
Public Arbitrator, Presiding Chair

July 6, 2005  
Signature Date

July 6, 2005  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

Donald K. Eckhardt, Esq. - Public Arbitrator, Presiding Chair

David G. Beerbower, Esq. - Public Arbitrator

Ruth Smith Jackson - Non-Public Arbitrator

Concurring Arbitrators:



David G. Beerbower, Esq.  
Public Arbitrator

7.6.05

Signature Date

Ruth Smith Jackson  
Non-Public Arbitrator

Signature Date

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Donald K. Eckhardt, Esq.  
Public Arbitrator, Presiding Chair

Signature Date

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**ARBITRATION PANEL**

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Concurring Arbitrators:

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David G. Beerbower, Esq.  
Public Arbitrator

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Ruth Smith Jackson  
Non-Public Arbitrator

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Donald K. Eckhardt, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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David G. Beerbower, Esq.  
Public Arbitrator

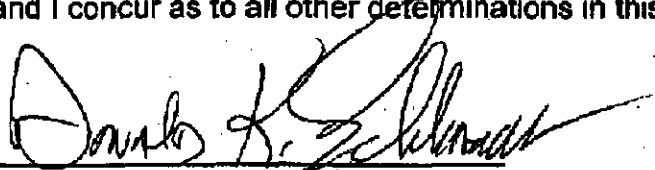
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Signature Date

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Non-Public Arbitrator

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Signature Date

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Donald K. Eckhardt, Esq.  
Public Arbitrator, Presiding Chair

  
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Signature Date

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Date of Service (For NASD office use only)