

NASD DISPUTE RESOLUTION AWARD
NASD DISPUTE RESOLUTION

CASE: 04-04651

Angel-Lynn Jolivette, and Angel-Lynn Jolivette, as Custodian for James Douglas Wise Cody Allen Wise, and Jesse Alexander Wise, Claimants v. Morgan Stanley DW, Inc. and Rodney Halverson, Respondents

ATTORNEYS:

Claimants Angel-Lynn Jolivette, and Angel-Lynn Jolivette, as Custodian for James Douglas Wise Cody Allen Wise, and Jesse Alexander Wise (collectively "Claimants") appeared *pro se* through Angel-Lynn Jolivette, Temecula, CA.

For Respondents Morgan Stanley DW, Inc. and Rodney Halverson (collectively "Respondents") appeared Christine A. Pham, Esq., in-house counsel, Morgan Stanley DW, Inc., Los Angeles, CA.

NATURE OF DISPUTE: Customers v. Member and Associated Person.

DATE FILED: June 25, 2004.

CASE SUMMARY: Claimants alleged that Respondents placed them in investments that were unsuitable to their investment objectives, omitted material facts and misrepresented information regarding the IPO TEK BX. Claimants further alleged that Respondents were negligent in handling the accounts. Claimants maintained that due to Respondents' actions, the accounts suffered losses. Claimants' claim involved CSCO, TXN, VFINX, and TEK BX.

Claim Data

Claim: \$24,974.22
Filing Fees: \$0.00

Award Data

Award: \$.00
Filing Fees: \$425.00

AWARD: The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) The claims of Claimants are dismissed in their entirety. 2) All other relief requests are denied. 3) NASD Dispute Resolution shall retain the \$425.00 filing fee that the Claimants deposited previously. 4) Respondent Morgan Stanley DW, Inc. is solely liable and shall pay Claimants \$425.00 as reimbursement of the filing fee.

OTHER FEES: Pursuant to Rule 10333 of the Code, Respondent Morgan Stanley DW, Inc. has paid to NASD Dispute Resolution the \$425.00 Member Surcharge previously invoiced.

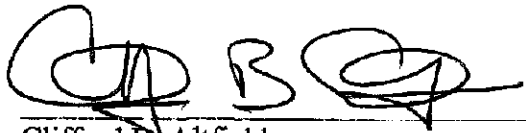
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Award 04-04651

Clifford B. Altfield

Sole Public Arbitrator

AFFIRMATION

I, Clifford B. Altfield, do hereby affirm, upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.


Clifford B. Altfield

3/23/05
Signature Date

April 19, 2005
Date of Service (For NASD-DR office use only)

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Exhibit A

Angel Jolivet submitted her statement of claim for simplified arbitration on June 14, 2004. Morgan Stanley answered and thereafter filed an amended answer on September 1, 2004. Ms. Jolivet responded on September 7, 2004. On November 1, 2004, Morgan Stanley submitted Mr. Halverson's daytimer and other documents. Ms. Jolivet responded on November 3 and the claim was submitted to the arbitrator under simplified procedures. The arbitrator took the oath and disclosed his representation in the *In re: Arm* case. Neither party objected.

Ms. Jolivet's complaints are set forth in her July 24, 2002 letter. She claims that Branch Manager, Rodney Halverson, strongly encouraged her to sell her Microsoft stock and put the money into a MS IPO technology fund, TEKBX, in August 2000. She did so, and TEKBX dropped rapidly in value. She claims that Mr. Halverson also talked her out of selling her Cisco stock which was trading at \$58. Her statement of claim contains additional details and seeks reimbursement of \$24,974.90.

Morgan Stanley contends that Ms. Jolivet had previously invested in non-conservative technology stocks, Cisco, Texas Instruments, and Microsoft, that Ms. Jolivet was experienced having purchased her own stocks through Schwab and E-trade, that she had a net worth of approximately \$900,000 and income of over \$100,000, and that Ms. Jolivet displayed a preference for growth over preservation of capital. Morgan Stanley claims that Ms. Jolivet had demonstrated interest in growth stocks.

Based upon the information submitted, the Arbitrator finds for Defendants Halverson and Morgan Stanley and against Plaintiff Jolivet.

Upon consideration of the pleadings, it is hereby adjudged awarding Angel-Lynn Jolivet nothing on her claim against Respondents Morgan Stanley, Dean Witter, Inc. and Rodney Halverson.

Attorneys fees are not awarded.

There is no counterclaim or crossclaim.

Morgan Stanley is to bear the NASD dispute resolution filing fees.

REASON FOR DECISION:

In a claim such as this, Ms. Jolivet has the burden of proof. That means she has the burden to persuade that is more likely than unlikely that Mr. Halverson put her in an unsuitable investment. NASD Rule 2310, addresses the suitability requirements. Among the factors in reviewing suitability is the sophistication of the Claimant, the financial worth of the Claimant, the income level of the Claimant, and the experience of the Claimant in stocks and other sophisticated financial instruments. The issue is whether Mr. Halverson's suggestion that Ms. Jolivet invest in TEKBX in October of 2000, is below the standard of care. Mr. Halverson placed Ms. Jolivet in the Morgan Stanley Technology Fund. Ms. Jolivet appears to have a substantial income and net worth. The fund was subject to the wild fluctuations in the

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technology market, but had a diversified portfolio of technology stocks. Prior to her investing with Morgan Stanley, Ms. Jolivet purchased Cisco Systems, Texas Instruments, as well as Microsoft. This shows that she was predisposed to invest in the volatile technology market. The technology market boomed and then crashed in mid 2000.

The change from a single technology stock, Microsoft, to a technology fund gave Ms. Jolivet diversity. Until mid-2000, technology stocks were very, very popular with investors. The crash in those stocks, and presumably the technology fund, came in the later half of 2000. There is simply insufficient evidence that placing Ms. Jolivet into the technology fund put her in an unsuitable investment, given her age, sophistication, net worth, and income level. The remaining claims of Ms. Jolivet, regarding omission of facts, mismanagement, lack of proper asset allocation, criteria neglected, unsuitable investment, and no choice offered for A, B or C fail for the same reasons.

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