

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Mary Ellen Watson, Individually and as Trustee for The Mary Ellen Watson Trust Dated 5/06/93,
Claimants v. Morgan Stanley DW Inc. and Theodore T. Rutter, Respondents

Case Number: 04-04763

Hearing Site: Los Angeles, California

Nature of the Dispute: Customers v. Member and Associated Person

REPRESENTATION OF PARTIES

For Claimants:

William S. Bonnheim, Esq.
William S. Bonnheim, PLC
Palm Desert, California

For Respondents:

Ronald E. Wood, Esq.
The Wood Group
Los Angeles, California

CASE INFORMATION

Statement of Claim filed: June 29, 2004

Amended Statement of Claim filed: November 30, 2004

Claimants' Joint Uniform Submission Agreement signed: March 12, 2004

Joint Statement of Answer filed: August 31, 2005

Respondent Morgan Stanley DW Inc.'s Uniform Submission Agreement signed: October 26, 2004

Respondent Theodore T. Rutter's Uniform Submission Agreement signed: October 26, 2004

CASE SUMMARY

Claimants Initial and Amended Statements of Claim alleged breach of fiduciary duty, unsuitability, constructive fraud, violation of NASD and NYSE rules, violation of state and federal securities laws, and failure to supervise. Claimants' allegations involved the alleged over concentration of her account in unspecified technology stock.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

RELIEF REQUESTED

In their Initial Statement of Claim, Claimants requested \$5,000.00 in compensatory damages, profits Respondents generated from the account of at least an amount equal to the total commissions and fees generated in all unsuitable transactions executed, lost opportunity cost of what Claimants' account would have earned if invested properly, pre- and post-judgment interest, and costs, including attorney's fees.

In their Amended Statement of Claim, Claimants requested \$343,742.00 in compensatory damages, profits Respondents generated from the account of at least an amount equal to the total commissions and fees generated in all unsuitable transactions executed, lost opportunity cost of what Claimants' account would have earned if invested properly, pre- and post-judgment interest, and costs, including attorney's fees.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

On July 15, 2004, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators. Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

Claimants' Initial Statement of Claim required the appointment of a single arbitrator. On October 26, 2004, during a pre-hearing conference with the Arbitrator, Claimants made a Motion to Amend their Statement of Claim pursuant to the NASD Code of Arbitration Procedure Rule 10328(b). The Arbitrator granted the motion on October 26, 2004.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondents Morgan Stanley DW Inc. and Theodore T. Rutter are jointly and severally liable to and shall pay Claimants the sum of \$141,433.66 in compensatory damages.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 300.00
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Morgan Stanley DW Inc. is a party and the following fees are assessed:

Member Surcharge	= \$1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$2,750.00</u>
Total Member Fees	= \$5,200.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

One (1) Pre-hearing conference session with a single arbitrator @ \$125.00/session	= \$ 125.00
Pre-hearing conference: October 26, 2004 1 session	

One (1) Pre-hearing conference session with the Panel @ \$1,125.00/session	= \$1,125.00
Pre-hearing conference: February 17, 2005 1 session	

Six (6) Hearing sessions @ \$1,125.00/session	= \$6,750.00
Hearings: October 5, 2005 2 sessions	
October 6, 2005 2 sessions	
October 7, 2005 2 sessions	

Total Forum Fees	= \$8,000.00
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1. The Panel assessed \$4,000.00 of the forum fees jointly and severally to Claimants Mary Ellen Watson and The Mary Ellen Watson Trust Dated 5/06/93.
2. The Panel assessed \$4,000.00 of the forum fees jointly and severally to Respondents Morgan Stanley DW Inc. and Theodore T. Rutter.

Fee Summary

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 4,000.00
Total Fees	= \$ 4,300.00
Less payments	= \$(1,425.00)
Balance Due NASD Dispute Resolution	= \$ 2,875.00

2. Respondent Morgan Stanley DW Inc. is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
Less payments	= \$(5,200.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Morgan Stanley DW Inc. and Theodore T. Rutter are charged jointly and severally with the following fees and costs:


Forum Fees	= \$ 4,000.00
Balance Due NASD Dispute Resolution	= \$ 4,000.00

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


ARBITRATION PANEL

<i>Herbert Leslie Greenberg</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Paul H. White</i>	-	<i>Public Arbitrator</i>
<i>Ronald L. Cameron</i>	-	<i>Non-Public Arbitrator</i>

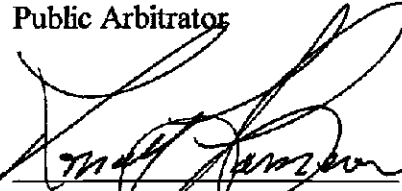
Concurring Arbitrators' Signatures


Herbert Leslie Greenberg
Chair, Public Arbitrator

10/7/05
Signature Date


Paul H. White
Public Arbitrator

10/7/05
Signature Date


Ronald L. Cameron
Non-Public Arbitrator

10/7/05
Signature Date

October 7, 2005
Date of Service