

**STIPULATED AWARD  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Claimant

Marynell Foran

and

Case Number: 04-05028  
Hearing Site: Chicago, Illinois

Respondents

Morgan Stanley DW, Inc., and  
Steven Daugherty

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**NATURE OF DISPUTE**

Customer v. Member and Associated Person

**REPRESENTATION OF PARTIES**

Marynell Foran ("Claimant") was represented by Martin Q. Ryan, Esq. and Alec J. Miller, Esq., Mora, Baugh, Waitzman & Under, LLC, Chicago, Illinois.

Morgan Stanley DW, Inc. ("MSDW") and Steven Daugherty ("Daugherty"), hereinafter collectively referred to as "Respondents," were represented by Bruce Lewitas, Esq., Lewitas & Associates, P.C., Chicago, Illinois.

**CASE INFORMATION**

The Statement of Claim was filed on or about July 14, 2004. The Submission Agreement of Marynell Foran was signed on or about June 19, 2004.

The Statement of Answer and Counterclaim was filed jointly by Respondents on or about October 7, 2004. The Submission Agreement of MSDW was signed on or about December 22, 2004. The Submission Agreement of Daugherty was signed on or about December 23, 2004.

Claimant filed a Motion to Dismiss Respondents' Counterclaim on or about May 18, 2005. Respondents filed a Response to the Motion on or about June 10, 2005.

Claimant filed an Emergency Motion for Sanctions on or about August 10, 2005.

Claimant filed a Motion to Enforce Settlement on or about March 17, 2006. Respondents filed a Response to the Motion on or about April 10, 2006.

### **CASE SUMMARY**

Claimant asserted the following causes of action: Daugherty failed to disclose the risks associated with the investment allocations recommended; Respondents intentionally, fraudulently, manipulatively, or deceptively misrepresented or omitted material facts about the investments and allocations recommended; Respondents intentionally or negligently misrepresented or omitted material facts about the allocations recommended; and Respondents failed to objectively investigate or research, or negligently investigated or researched, the investments recommended. The causes of action related to Claimant's allegations that, in contrast to her investment objectives, Respondents placed Claimant's pension and 401K assets into aggressive, growth-oriented equities including Rorer Management, Groupama, Anchor, Insight and Brandes Investors.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant authorized, approved and ratified the transactions in question; Claimant knew of and assumed the risks associated with the transactions; the claims are barred by the theories of contributory and/or comparative negligence; the claims are barred by the doctrine of unclean hands; the claims are barred by the doctrines of laches and/or the relevant statutes of limitation; and Claimant's damages, if any, were caused by market forces beyond the control of Respondents.

Respondents asserted a Counterclaim against Claimant for indemnification.

### **RELIEF REQUESTED**

Claimant requested:

Compensatory Damages	\$308,000.00
Punitive Damages	\$ unspecified
Interest	\$ unspecified
Attorneys' Fees	\$ unspecified
Other Costs	\$ unspecified
Other Monetary/Non-Monetary Relief:	\$ unspecified

Unless specifically admitted in their Answer, Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. In their Counterclaim, Respondents requested contractual indemnification for losses arising from Claimant's account and an award of its costs and fees incurred.

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

In its Order entered on June 28, 2005, the panel denied Claimant's Motion to Dismiss Respondents' Counterclaim.

At the hearing on August 15, 2005, the parties advised the panel that they had reached a settlement and would forward a proposed Stipulated Award to the panel which would include language regarding expungement of all references to this matter from the CRD record of Steven Daugherty.

In its Order entered on April 26, 2006, the panel denied Claimant's Motion to Enforce Settlement and ordered that a pre-hearing conference be held during the week of May 1, 2006 during which the parties were to present dates to reset the hearing.

During the pre-hearing on May 3, 2006, the parties advised the panel that the claims were settled. The panel agreed at the pre-hearing to accept a stipulated brief on expungement. In its Order entered on May 15, 2006, the panel set May 31, 2006 as the due date for the brief in support of expungement and set a hearing on expungement for June 19, 2006.

The parties have agreed that the Stipulated 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.) All claims and counterclaims having been withdrawn or settled, the same are hereby dismissed with prejudice;
- 2.) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent, Steven Daugherty's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-16, Respondent Steven Daugherty must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by the 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.

Pursuant to Rule 2130, the arbitration panel has made the following affirmative findings of fact:

The claim, allegation, or information is false;

- 3.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 4.) Any relief not specifically enumerated, including punitive damages and attorneys' fees, is hereby denied with prejudice.

### **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	= \$ 300.00
Counterclaim filing fee	= \$ 1,000.00

#### **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 event giving rise to the dispute. In this matter, the member firm is Morgan Stanley DW, Inc.

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00

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

The Panel has assessed forum fees for each hearing session conducted and each decision rendered on a discovery-related motion on the papers. 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:

Two (2) Pre-hearing sessions with a single arbitrator x \$450.00	= \$ 900.00
Pre-hearing conferences: May 25, 2005	1 session
July 28, 2005	1 session

Two (2) Pre-hearing session with Panel x \$1,125.00	= \$ 2,250.00
Pre-hearing conference: December 27, 2004	1 session
May 3, 2006	1 session

One (1) Hearing session x \$1,125.00	= \$ 1,125.00
Hearing Date: June 19, 2006	1 session
Total Forum Fees	= \$ 4,275.00

The Arbitration Panel has assessed \$1,012.50 of the forum fees to Marynell Foran.

The Arbitration Panel has assessed \$3,262.50 of the forum fees jointly and severally to Morgan Stanley DW, Inc. and Steven Daugherty.

### **Fee Summary**

Claimant, Marynell Foran, is liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 1,012.50
Total Fees	= \$ 1,312.50
Less payments	= \$ 1,425.00
Balance Refunded by NASD Dispute Resolution	= \$ 112.50

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

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

Respondents, Morgan Stanley DW, Inc., and Steven Daugherty, are jointly and severally liable for:

Counterclaim Filing Fee	= \$ 1,000.00
Forum Fees	= \$ 3,262.50
Total Fees	= \$ 4,262.50
Less payments	= \$ 650.00
Balance Due NASD Dispute Resolution	= \$ 3,612.50

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

**ARBITRATION PANEL**

Robin David, Esq. - Public Arbitrator, Presiding Chair  
Michael S. Matek, Esq. - Public Arbitrator  
Frank F. Foys - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Robin David, Esq.  
Robin David, Esq.  
Public Arbitrator, Presiding Chair

July 19, 2006  
Signature Date

/s/ Michael S. Matek, Esq.  
Michael S. Matek, Esq.  
Public Arbitrator

July 19, 2006  
Signature Date

Frank F. Foys  
Non-Public Arbitrator


Signature Date

July 26, 2006  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

Robin David, Esq. - Public Arbitrator, Presiding Chair  
Michael S. Matek, Esq. - Public Arbitrator  
Frank F. Foys - Non-Public Arbitrator

Concurring Arbitrators:

  
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Robin David, Esq.  
Public Arbitrator, Presiding Chair

7/19/06  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Michael S. Matek, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Frank F. Foys  
Non-Public Arbitrator

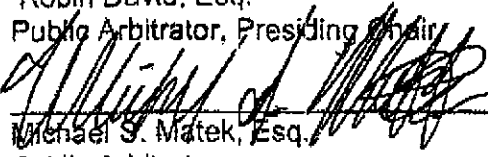
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Public Arbitrator, Presiding Chair  
  
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Public Arbitrator

Signature Date

7-19-06  
Signature Date

Frank F. Foys  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)