

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

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In the Matter of the Arbitration Between:

Names of the Claimants  
Peter and Carrie Wiesel

Case Number: 04-05838

Names of the Respondent  
Morgan Stanley DW, Inc.  
Randolph Zimmer

Hearing Site: Philadelphia, Pennsylvania

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

**REPRESENTATION OF PARTIES**

Claimants, Peter and Carrie Wiesel, hereinafter collectively referred to as "Claimants", were represented by Thomas J. Momjian, Esq., Coss & Momjian, LLP, Bala Cynwyd, Pennsylvania.

Respondents, Morgan Stanley DW, Inc. ("Morgan Stanley") and Randolph Zimmer ("Zimmer"), hereinafter collectively referred to as "Respondents", were represented by Joshua K. Leader, Esq., Leader & Berkon, LLP, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on August 17, 2004.

Claimants filed an undated Uniform Submission Agreement.

Statement of Answer filed by Respondents on October 27, 2004.

A representative of Respondent Morgan Stanley executed the Uniform Submission Agreement on September 20, 2004.

Respondent Zimmer signed the Uniform Submission Agreement on September 21, 2004.

**CASE SUMMARY**

Claimants, in their Statement of Claim asserted the following causes of action, among others: breach of fiduciary duty, suitability, negligence, negligent and/or intentional misrepresentation, fraud, breach of contract, and violation of federal and/or state securities laws, regulations and/or guidelines, including the Securities Exchange Act of 1933 and 1934. The causes of action relate to the purchase of various stocks on margin including JDS Uniphase, Sycamore Networks, and Amtel Corporation stock.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: failure to state a claim upon which relief may be granted; authorization; Claimants' claims are barred by the doctrines of waiver, estoppel and ratification; contributory or comparative negligence; failure to mitigate damages; Claimants' claims are barred by the economic loss doctrine; statutes of limitations; and, assumption of risk.

### **RELIEF REQUESTED**

Claimants in their Statement of Claim requested:

Compensatory Damages	\$ 300,000.00
Punitive Damages	amount unspecified
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondents in their Statement of Answer requested that the Statement of Claim be dismissed in its entirety; that the Arbitration Panel (the "Panel") order that all mention of this action be expunged from Respondent Zimmer's records maintained by NASD Central Registration Depository ("CRD"); that Respondents be awarded their costs and expenses of this arbitration; and that Respondents be awarded such other relief as is just and proper.

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

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.

### **AWARD**

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

1. Claimants' claims are denied in their entirety;
2. Claimants' claims for punitive damages are denied in their entirety;
3. All claims for punitive damages and attorneys' fees are denied in their entirety;
4. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Zimmer's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Zimmer 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;

5. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and
6. Any and all relief not specifically addressed herein is denied in its entirety.

### **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
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#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Respondent Morgan Stanley is a party.

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 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:

One (1) Pre-hearing session with Panel @ \$ 1,125.00	= \$ 1,125.00
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Pre-hearing conference:	January 21, 2005	1 session
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Six (6) Hearing sessions @ \$ 1,125.00	= \$ 6,750.00
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Hearing Dates:	September 7, 2005	2 sessions
	September 8, 2005	2 sessions
	September 9, 2005	2 sessions

Total Forum Fees	= \$ 7,875.00
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1. The Panel has assessed \$ 3,937.50 of the forum fees jointly and severally to Claimants.
2. The Panel has assessed \$ 3,937.50 of the forum fees jointly and severally to Respondents.

### **EEE SUMMARY**

Claimants are assessed and shall pay:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$ 3,937.50</u>

Total Fees	= \$ 4,237.50
<u>Less payments</u>	<u>= \$ 1,425.00</u>
Balance Due NASD Dispute Resolution	= \$ 2,812.50

Respondent, Morgan Stanley, is assessed and shall pay:

<u>Member Fees</u>	<u>= \$ 5,200.00</u>
Total Fees	= \$ 5,200.00
<u>Less payments</u>	<u>= \$ 5,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 00.00

Respondents, Morgan Stanley and Zimmer, are jointly and severally assessed and shall pay:

<u>Forum Fees</u>	<u>= \$ 3,937.50</u>
Total Fees	= \$ 3,937.50
<u>Less payments</u>	<u>= \$ 00.00</u>
Balance Due NASD Dispute Resolution	= \$ 3,937.50

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

**ARBITRATION PANEL**

Abraham Harry Bunis	- Public Arbitrator, Presiding Chairperson
Diane Ciccone, Esq.	- Public Arbitrator, Panelist
Michael D. Neft	- Non-Public Arbitrator, Panelist

*Abraham Harry Bunis*  
Abraham Harry Bunis  
Public Arbitrator, Presiding Chairperson

10/11/25  
Signature Date

**Signature Date**

**Signature Date**

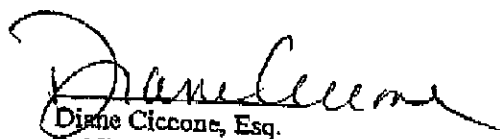
October 14, 2005  
Date of Service (For NASD Dispute Resolution office use only)

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Concurring Arbitrators' Signatures

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Abraham Harry Bunis  
Public Arbitrator, Presiding Chairperson

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

  
Diane Ciccone, Esq.  
Public Arbitrator, Panelist

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Signature Date

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Michael D. Neft  
Non-Public Arbitrator, Panelist

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Non-Public Arbitrator, Panelist

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Signature Date

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