

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Marilyn Banks

and

04-06440

Kansas City, Missouri

Name of Respondents

Morgan Stanley DW Inc.

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

Marilyn Banks ("**Claimant**") was represented by John J. Miller, Esq., Law Office of John J. Miller, P.C., Kansas City, Missouri.

Morgan Stanley DW Inc. ("**Respondent**") was represented by Joseph B. Alonso, Esq., Brock, Clay, Calhoun & Wilson, P.C., Marietta, Georgia.

CASE INFORMATION

Claimant Marilyn Banks filed her Statement of Claim on or about September 8, 2004. Claimant signed her Uniform Submission Agreement on or about August 31, 2004.

Respondent Morgan Stanley DW Inc. filed its Answer on or about November 12, 2004. Respondent sign its Uniform Submission Agreement on or about October 8, 2004.

CASE SUMMARY

In her Statement of Claim, Claimant alleged that Respondent invested her retirement funds in unsuitable stock growth funds and made false representations regarding her withdrawals, causing financial anguish. Claimant asserted violations of the Missouri Securities Act; misrepresentation and omission; negligence; and breach of fiduciary duty.

In its Answer, Respondent generally denied each and every allegation. Respondent asserted the following affirmative defenses: Claimant's claims are barred by her failure to exercise due diligence; the transactions in Claimant's accounts were suitable; Claimant was advised of the risk and assumed that risk; Claimant is estopped from asserting claims having waived any objections; Claimant ratified

and approved the transactions; no misrepresentations or omissions have been made by Respondent; there was no intent to defraud Claimant; Claimant is barred recovery based on comparative negligence; Claimant has not mitigated her damages; Claimant is estopped by her own conduct; Claimant cannot establish the level of scienter necessary to establish liability; Claimant's claims do not meet the requisite pleading requirements for fraud; Respondent acted in good faith and exercised reasonable diligence; Claimant's losses were proximately caused by her own decisions, conduct and/or negligence; all common law tort claims are barred by the Economic Loss Doctrine; market conditions and events beyond Respondent's control caused certain losses; Respondent had reasonable and adequate supervisory procedures of its financial advisor; the Statement of Claim is barred by the applicable statute of limitations; Claimant has failed to state a claim upon which relief can be granted.

RELIEF REQUESTED

In her Statement of Claim, Claimant requested an award against Respondent for restoration of losses in her accounts in the amount of \$86,879; disgorgement of commissions, costs, and charges received by Respondent; damages for the amount that Claimant's invested assets would now be worth had they been suitably managed in accordance with the Claimant's investment objectives, and/or interest as provided by statute; punitive damages to punish Respondent and to deter others from similar misconduct; Claimant's costs and expenses, including attorneys' fees; such other relief as the panel deems just and proper.

In its Answer, Respondent requested that Respondent not be found liable; that Claimants take nothing; and such other relief as the Panel deems just and proper.

OTHER ISSUES CONSIDERED & 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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "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. The claims asserted in this matter are dismissed with prejudice.
2. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.

3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees, not specifically awarded or otherwise provided for above.

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 = \$225.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is Morgan Stanley DW Inc.

Member surcharge	\$	1,100.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	1,700.00
Total Member Fees	\$	3,550.00

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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

1 Pre-hearing session(s) with a single arbitrator	x	\$450.00	\$	450.00
June 20, 2005	1 session			
1 Pre-hearing session(s) with Panel	x	750.00	\$	750.00
January 24, 2005	1 session			
4 Hearing sessions	x	750.00	\$	3,000.00
September 7, 2005	2 sessions			
September 8, 2005	2 sessions			
Total Forum Fees			\$	4,200.00

The Arbitration Panel has assessed \$4,200.00 of the forum fees to Morgan Stanley DW Inc.

Fee Summary

Claimant, Marilyn Banks, is liable for:

Initial Filing Fee	= \$	225.00
Total Fees	= \$	225.00
<u>Less payments</u>	= \$	-975.00
Balance to be refunded by NASD Dispute Resolution	= \$	- 750.00

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

Member Fees	= \$	3,550.00
<u>Forum Fees</u>	= \$	4,200.00
Total Fees	= \$	7,750.00
<u>Less payments</u>	= \$	-3,550.00
Balance Due NASD Dispute Resolution	= \$	4,200.00

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

M. W. Gear - Public Arbitrator, Presiding Chair
Ira B. Hyde - Public Arbitrator
Lonnie L. Cunningham - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Ira B. Hyde
Ira B. Hyde
Public Arbitrator

September 15, 2005
Signature Date

/s/ Lonnie L. Cunningham
Lonnie L. Cunningham
Non-Public Arbitrator

September 15, 2005
Signature Date

Dissenting Arbitrator:

/s/ M. W. Gear
M. W. Gear
Public Arbitrator, Presiding Chair

September 15, 2005
Signature Date

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NASD

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 Arbitration No. 04-06440
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 Ira B. Hyde
 Public Arbitrator

9-15-05
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M. W. Gear

9/15/05

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Signature Date

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9/16/05
Date of Service (For NASD office use only)