

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

George Potter and Antonietta M. Potter JTEN; George Potter and Deborah D. Lee JTWROS,
Claimants v. Morgan Stanley DW Inc., Respondent

Case Number: 04-06868

Hearing Site: Los Angeles, California

Nature of the Dispute: Customers v. Member

REPRESENTATION OF PARTIES

For Claimants:

Salim N. Turk, Esq.
Liberatore & Turk
Los Angeles, California

For Respondent:

Ronald E. Wood, Esq.
Christine A. Pham, Esq.
Morgan Stanley DW Inc.
Los Angeles, California

CASE INFORMATION

Statement of Claim filed: September 28, 2004

Claimants' Joint Uniform Submission Agreement signed: September 15, 2004 and
September 20, 2004

Statement of Answer filed by Respondent: December 14, 2004

Respondent's Uniform Submission Agreement signed: None Filed

CASE SUMMARY

Claimants alleged unsuitability, breach of fiduciary duty, fraud, constructive fraud, and failure to supervise. Claimants' allegations involved transactions in shares in Claimants' accounts in various securities, mutual funds, and unit investment trusts.

Respondent denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested \$98,000.00 in compensatory damages, unspecified punitive damages, disgorgement and restitution of all earnings, profits, compensation and benefits in an unspecified amount, lost opportunity costs in an unspecified amount, rescission, pre- and post-judgment interest and costs, including attorney's fees.

Respondent requested dismissal of the Claimants' Statement of Claim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent did not file with NASD Dispute Resolution a properly executed submission agreement but is required to submit to arbitration pursuant to the NASD *Code of Arbitration Procedure* (Code) and having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

On September 15, 2004, Claimants and Claimants' 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 IM-10100 of the Code, the waiver of the Claimants 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.

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) Respondent is liable to and shall pay Claimants the sum of \$11,000.00 in compensatory damages, inclusive of interest.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) Any and all other relief not specifically addressed herein, including punitive damages, 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	= \$ 225.00
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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	= \$ 1,100.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 1,700.00</u>
Total Member Fees	= \$ 3,550.00

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 @ \$450.00/session	= \$ 450.00
Pre-hearing conference: June 21, 2005 1 session	

One (1) Pre-hearing conference session with the Panel @ \$750.00/session	= \$ 750.00
Pre-hearing conference: January 19, 2005 1 session	

Six (6) Hearing sessions @ \$750.00/session	= \$ 4,500.00
Hearings: August 8, 2005 2 sessions	
August 9, 2005 2 sessions	
August 10, 2005 2 sessions	

Total Forum Fees	= \$ 5,700.00
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The Panel assessed \$5,700.00 in forum fees to Respondent.

Fee Summary

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

Initial Filing Fee	= \$ 225.00
Less payments	= \$ (975.00)
Refund due Claimants	= \$ (750.00)

2. Respondent is charged with the following fees and costs:

Member Fees	= \$ 3,550.00
Forum Fees	= \$ 5,700.00
Total Fees	= \$ 9,250.00
Less payments	= \$ (3,550.00)
Balance Due NASD Dispute Resolution	= \$ 5,700.00

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

Elliott Finkel	-	Public Arbitrator, Presiding Chair
Alan M. Rosen	-	Public Arbitrator
Gerald C. Tambe	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Elliott Finkel
Chair, Public Arbitrator

8-17-05

Signature Date

Alan M. Rosen
Public Arbitrator

Signature Date

Gerald C. Tambe
Non-Public Arbitrator

Signature Date

8/17/05

Date of Service

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Chair, Public Arbitrator

Signature Date

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Alan M. Rosen
Public Arbitrator

8/16/05
Signature Date

Gerald C. Tambe
Non-Public Arbitrator

Signature Date

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