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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Blossom Popkin

Case Number: 04-07833

Name of the Respondent  
Morgan Stanley Dean Witter, Inc.

Hearing Site: Boca Raton, Florida

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

For Blossom Popkin, hereinafter referred to as "Claimant": Sean M. Keane, Esq., SimmonsCooper LLC, East Alton, Illinois.

For Morgan Stanley Dean Witter, Inc., hereinafter referred to as "Respondent": Peter J. Aldrich, Esq., Palm Beach Gardens, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: November 12, 2004.

Claimant signed the Uniform Submission Agreement: October 5, 2004.

Statement of Answer filed by Respondent on or about: January 4, 2005.

Respondent signed the Uniform Submission Agreement: December 8, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: 1) breach of fiduciary duty; 2) breach of contract; 3) violation of the Securities Exchange Act of 1934 and Rule 10(b)(5); 4) violation of Florida Statutes, Chapters 517 *et seq.*, 501.204(1), 772.103(1) and 825.103. The causes of action relate to the purchase of various variable annuities and mutual funds including, but not limited to, MSDW Total Return Trust B, MSDW Fund of Funds Int'l B and MSDW Aggressive Equity Fund B in Claimant's accounts.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$200,000.00, pre-judgment interest, attorney's fees and punitive/treble damages.

Respondent requested an award in its favor, including costs. In addition, Respondent states its intent to seek attorney's fees from a court of competent jurisdiction.

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

During the final hearings for this matter, Respondent made an ore tenus Motion to Exclude a claim referred to by Claimant involving Claimant's grandson's account. Said account did not appear in Claimant's Statement of Claim. The Panel granted Respondent's motion.

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

### **AWARD**

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

Respondent is found not liable and Claimant's claims are denied in their entirety.

Respondent shall pay Claimant the amount of \$375.00 representing reimbursement of the claim filing fee previously paid by Claimant to NASD Dispute Resolution.

Any and all claims for relief not specifically addressed herein, including Claimant's requests for punitive/treble damages, attorney's fees and request for relief pursuant to Florida Statutes, Chapters 517 *et seq.*, 501.204(1), 772.103(1) and 825.103 and Respondent's request for attorney's fees, are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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	= \$ 375.00
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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 firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Respondent is a party to this dispute and was a member of NASD at the time the following fees were assessed:

Member surcharge	= \$ 2,250.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$ 4,000.00</u>
Total Member Fees	= \$ 7,000.00

### **Adjournment Fees**

The following adjournment fees are assessed:

January 30 – February 2, 2006, adjournment requested by Claimant = \$1,200.00

The Panel has assessed the total adjournment fee of \$1,200.00 to Claimant.

### **Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No cancellation fees were assessed in this matter.

### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

No injunctive relief fees were incurred during this proceeding.

### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: June 23, 2006 1 session	
One (1) Pre-hearing session with the Panel @ \$1,200.00	= \$1,200.00
Pre-hearing conference: February 16, 2005 1 session	
Four (4) Hearing sessions with the Panel @ \$1,200.00/session	= \$4,800.00
Hearing Dates: July 25, 2006 2 sessions	
July 26, 2006 2 sessions	
<hr/> Total Forum Fees	<hr/> = \$6,450.00

The Panel has assessed the total forum fees of \$6,450.00 to Respondent.

### **Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security. No administrative costs were incurred during this proceeding.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 375.00
Postponement Fee	= \$ 1,200.00
Total Fees	= \$ 1,575.00
Less payments	= \$ 1,575.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent is solely liable for:

Member Fees	= \$ 7,000.00
Forum Fees	= \$ 6,450.00
Total Fees	= \$ 13,450.00
Less payments	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$ 6,450.00

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

**ARBITRATION PANEL**

<i>Todd M. Saunders, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Michael D. Felton, Esq</i>	-	<i>Public Arbitrator</i>
<i>Donald S. Tuck</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

/s/  
Todd M. Saunders, Esq.  
Public Arbitrator, Presiding Chairperson

07/28/06  
Signature Date

/s/  
Michael D. Felton, Esq  
Public Arbitrator

07/28/06  
Signature Date

/s/  
Donald S. Tuck  
Non-Public Arbitrator

07/27/06  
Signature Date

07/31/06  
Date of Service (For NASD Dispute Resolution office use only)

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