

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Names of Claimants

Frances M. Mitchell Revocable Trust
and Frances M. Mitchell, sole trustee

and

Case Number: 04-08655
Hearing Site: Houston, Texas

Names of Respondents

Morgan Stanley DW, Inc.,
and Edward Butowsky

NATURE OF DISPUTE

Customers v. Member and Associated Person

REPRESENTATION OF PARTIES

Frances M. Mitchell Revocable Trust and Frances M. Mitchell, sole trustee, collectively referred to as "Claimants," were represented by Patrick Zummo, Esq., Zummo & Midkiff, LLP, Houston, Texas and Charles L. Henke, Esq., Henke & Joseph, LLP, Houston, Texas.

Morgan Stanley DW, Inc. ("Morgan Stanley") and Edward Butowsky ("Butowsky"), hereinafter collectively referred to as "Respondents," were represented by David D. Sterling, Esq., Baker Botts, LLP, Houston, Texas.

CASE INFORMATION

The Statement of Claim was filed on or about December 23, 2004. The Submission Agreement of Claimants was signed on or about December 21, 2004.

A Statement of Answer was filed jointly by Respondents Morgan Stanley and Butowsky on or about January 25, 2005. The Submission Agreement of Respondent Morgan Stanley was signed on or about January 13, 2005 by Judith N. Rosenberg. The Submission Agreement of Respondent Edward Butowsky was signed on or about October 24, 2005.

Respondents' Motion to Dismiss, or in the Alternative, for Summary Judgment was filed on or about August 9, 2005.

Claimants' Response to Respondents' Motion to Dismiss, or in the Alternative for Summary Judgment was filed on or about August 24, 2005.

Respondents' Brief in Support of their Motion to Dismiss, or in the Alternative, for Summary Judgment was filed on or about September 28, 2005.

Claimants' Supplemental to the Response to Respondents' Motion, or in the Alternative, for Summary Judgment was filed on or about September 26, 2005.

CASE SUMMARY

Claimants asserted the following causes of action: negligence; failure to supervise; breach of fiduciary duty; constructive fraud; conspiracy; misrepresentations; churning; and suitability. Claimants alleged that the Respondents diverted the trust assets from extremely safe investments in the form of annuity and life insurance policies into speculative, high-risk, wholly unsuitable investments, which resulted in substantial losses in their accounts.

Unless specifically admitted in their Answer, Respondents Morgan Stanley and Butowsky denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimants' claims are barred, in whole or in part, by the doctrines of waiver, laches and ratification; and Claimants' claims are barred, in whole or in part, by their settlement with her grandson, George Williams.

RELIEF REQUESTED

Claimants requested an award in the amount of \$600,000.00 in compensatory damages, \$1,200,000.00 in punitive damages, costs and attorneys' fees and any other relief as the panel deemed just and proper.

At the hearing, the Claimants amended their request for damages in the amount of \$586,373.00 in compensatory damages, and \$193,192.00 in attorneys' fees.

Respondents requested that the claims asserted against them be denied in their entirety and any other relief as the panel deem just and proper.

OTHER ISSUES CONSIDERED & DECIDED

The panel granted Respondents' request for oral arguments on the Motion to Dismiss which was held on October 3, 2005. After listening to the arguments the panel deferred a ruling on the Motion until they had an opportunity hear more of the evidence that will be presented during this hearing.

At the hearing, Respondents orally moved for a direct verdict and requested that the panel enter an order expunging the CRD records of Respondent Butowsky. The panel denied Respondents' Motion to Dismiss and Motion for Directed Verdict. The panel also denied Respondent Butowsky's request for an expungement.

At the Respondents' closing arguments, Respondent Butowsky requested that the panel reconsider his request for an order expunging his CRD records. The panel took no further action.

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 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) Claimants' claims, each and all, against Respondents, Morgan Stanley DW, Inc. and Edward Butowsky, were denied in their entirety with prejudice;
- 2) Respondent, Edward Butowsky's request that the panel enter an order expunging all claims from his CRD records is denied;
- 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 attorney fees, is hereby denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee = \$500.00

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

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,000.00

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

Two (2) Pre-hearing sessions with Panel x \$1,200.00	= \$2,400.00
Pre-hearing conferences:	
April 18, 2005	1 session
October 3, 2005	1 session
(5) Hearing sessions x \$1,200.00	= \$6,000.00
Hearing Dates:	
October 25, 2005	2 sessions
October 26, 2005	2 sessions
October 27, 2005	1 session
Total Forum Fees	= \$8,400.00

The Arbitration Panel has assessed \$8,400.00 of the forum fees jointly and severally to Frances M. Mitchell Revocable Trust and Frances M. Mitchell.

Fee Summary

Claimants, Frances M. Mitchell Revocable Trust and Frances M. Mitchell, are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 8,400.00
Total Fees	= \$ 8,900.00
Less payments	= \$ 1,700.00
Balance Due NASD Dispute Resolution	= \$ 7,200.00

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

<u>Member Fees</u>	= \$8,550.00
<u>Total Fees</u>	= \$8,550.00
<u>Less payments</u>	= \$8,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

ARBITRATION PANEL

Frank B. Fugate - Public Arbitrator, Presiding Chair
Thomas A. Martin - Public Arbitrator
William Richard Smith - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Frank B. Fugate
Frank B. Fugate
Public Arbitrator, Presiding Chair

11/14/05
Signature Date

/s/ Thomas A. Martin
Thomas A. Martin
Public Arbitrator

11/14/05
Signature Date

William Richard Smith
Non-Public Arbitrator

Signature Date

11/14/05
Date of Service (For NASD office use only)

Member Fees	= \$8,550.00
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Public Arbitrator

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Concurring Arbitrators:

Frank B. Fugate
Public Arbitrator, Presiding Chair

Signature Date

Thomas A. Martin
Public Arbitrator

Signature Date

William Richard Smith
William Richard Smith
Non-Public Arbitrator

Nov 14, 2005
Signature Date

Date of Service (For NASD office use only)