

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

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In the Matter of the Arbitration Between:

Name of the Claimant

Carol Ann McInerney

Case Number: 04-08799

Names of the Respondents

Morgan Stanley DW, Inc.  
Citigroup Global Markets, Inc.  
Jack Zotti

Hearing Site: Philadelphia, PA

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Nature of the Dispute: Customer vs. Members and Associated Person.

**REPRESENTATION OF PARTIES**

Claimant, Carol Ann McInerney, hereinafter referred to as "Claimant", was represented by Chad N. Cagan, Esq. and Jerry Selvers, Esq., Sonnenblick, Parker & Selvers, P.C., Freehold, New Jersey.

Respondent Morgan Stanley DW, Inc. ("Morgan Stanley"), was represented by Alan S. Brodherson, Esq., Law Offices of Alan S. Brodherson, New York, New York

Respondents Citigroup Global Markets, Inc. ("Citigroup") and Jack Zotti ("Zotti"), were represented by Richard C. Szuch, Esq., Dillon, Bitar & Luther, LLC, Morristown, New Jersey.

**CASE INFORMATION**

Statement of Claim filed on December 30, 2004.

Claimant signed the Uniform Submission Agreement on December 20, 2004.

Statement of Answer filed by Respondents Morgan Stanley and Zotti on March 8, 2005.

A representative of Respondent Morgan Stanley executed the Uniform Submission Agreement on March 4, 2005.

Statement of Answer and Motion to Dismiss filed by Respondents Citigroup and Zotti on March 15, 2005.

A representative of Respondent Citigroup executed the Uniform Submission Agreement on March 24, 2005.

Respondent Zotti signed the Uniform Submission Agreement on April 10, 2005.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted the following causes of action, among others: unsuitability, violation of New Jersey Securities Act, fraud, misrepresentation, breach of contract, breach of fiduciary duties, negligence, *respondeat superior*, aiding and abetting, and failure to supervise. The causes of action relate to the purchase and sale of various unspecified securities.

Unless specifically admitted in their Statement of Answer, Respondents Morgan Stanley and Zotti 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, estoppel, laches, ratification, assumption of the risk, and authorization.

Unless specifically admitted in their Statement of Answer, Respondents Citigroup and Zotti 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, waiver, estoppel, laches, ratification, Claimant's claims are barred by the statute of limitations, contributory negligence, assumption of the risk, and authorization.

### **RELIEF REQUESTED**

Claimant in her Statement of Claim requested:

Compensatory Damages	\$ 125,000.00
Punitive Damages	amount unspecified
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondents Morgan Stanley and Zotti requested that the Statement of Claim be dismissed in its entirety, that they be awarded costs and expenses of this arbitration, and that the Arbitration Panel (the "Panel") order the expungement of all reference to this matter from the NASD Central Registration Depository ("CRD") record of Respondent Zotti.

Respondents Citigroup and Zotti requested dismissal of the Statement of Claim, that they be awarded costs and fees of this arbitration, and that the Panel order the expungement of all reference to this matter from the CRD record of Respondent Zotti.

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

On or around March 28, 2006, Claimant notified NASD Dispute Resolution that she had dismissed all claims against Respondent Morgan Stanley.

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, 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:

1. Respondent Citigroup is liable to and shall pay to Claimant the sum of \$14,081.00 in compensatory damages. No interest is awarded on this amount;

2. Respondent Zotti is liable to and shall pay to Claimant the sum of \$9,999.00 in compensatory damages. No interest is awarded on this amount;
3. Respondents Citigroup and Zotti are jointly and severally liable to and shall pay to Claimant the sum of \$300.00 in reimbursement for the initial-claim filing fee;
4. The parties shall bear their respective costs, except as Fees are specifically addressed below; and
5. Any and all relief not specifically addressed herein, including punitive damages, 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 firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Respondents Morgan Stanley and Citigroup are parties.

##### **Morgan Stanley**

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00

##### **Citigroup**

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00

#### **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 a single arbitrator @ 450.00	= \$ 450.00
Pre-hearing conference: January 19, 2006	

One (1) Pre-hearing session with the Panel @ \$ 1,125.00	= \$ 1,125.00
Pre-hearing conference: June 8, 2005 1 session	

Four (4) Hearing sessions @ \$ 1,125.00 = \$ 4,500.00

Hearing Dates: April 4, 2006 2 sessions  
April 5, 2006 2 sessions

Total Forum Fees = \$ 6,075.00

The Panel has assessed \$ 6,075.00 of the forum fees jointly and severally to Respondents Citigroup and Zotti.

Fee Summary

1. Claimant is assessed and shall pay:

Initial Filing Fee	= \$ 300.00
Total Fees	= \$ 300.00
Less payments	= \$ 1,425.00
Refund owed Claimant	= \$ 1,125.00

2. Respondent Morgan Stanley is assessed and shall pay:

Member Fees	= \$ 5,200.00
Total Fees	= \$ 5,200.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondent Citigroup is assessed and shall pay:

Member Fees	= \$ 5,200.00
Total Fees	= \$ 5,200.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

4. Respondents Citigroup and Zotti are jointly and severally assessed and shall pay:

Forum Fees	= \$ 6,075.00
Total Fees	= \$ 6,075.00
Less payments	= \$ 1,800.00
Balance Due NASD Dispute Resolution	= \$ 4,275.00

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

ARBITRATION PANEL

Allen Kilik, Esq.	- Public Arbitrator, Presiding Chairperson
John R. Shope, CFA	- Public Arbitrator, Panelist
Andrew W. Daviit, Esq.	- Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures

*Allen Kilik*

Allen Kilik, Esq.  
Public Arbitrator, Presiding Chairperson

*4-7-06*

Signature Date

John R. Shope, CFA  
Public Arbitrator, Panelist

Signature Date

Andrew W. Davitt, Esq.  
Non-Public Arbitrator, Panelist

Signature Date


*April 7 2006*

Date of Service (For NASD Dispute Resolution office use only)

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Allen Kihik, Esq.  
Public Arbitrator, Presiding Chairperson

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Signature Date

  
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John R. Shope, CFA  
Public Arbitrator, Panelist

4/7/06  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Andrew W. Davitt, Esq.  
Non-Public Arbitrator, Panelist

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

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Allen Kilk, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

John R. Shope, CFA  
Public Arbitrator, Panelist

Signature Date

Andrew W. Davitt  
Andrew W. Davitt, Esq.  
Non-Public Arbitrator, Panelist

4-7-6  
Signature Date

April 7, 2006  
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