

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant

Cynthia Reithel

and

Case Number: 04-08804  
Hearing Site: Chicago, Illinois

Name of Respondent

Morgan Stanley DW, Inc.

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**NATURE OF DISPUTE**

Customer v. Member Firm

**REPRESENTATION OF PARTIES**

Cynthia Reithel ("**Claimant**") was represented by James A. McGurk, Esq., The Law Offices of James A. McGurk, PC, Chicago, Illinois.

Morgan Stanley DW, Inc. ("**Respondent**") was represented by Aaron Danzer, Esq., Morgan Stanley DW, Inc., San Francisco, California.

**CASE INFORMATION**

The Statement of Claim was filed on or about December 30, 2004. The Submission Agreement of Claimant, Cynthia Reithel, was signed on or about December 28, 2004.

The Statement of Answer was filed by Respondent, Morgan Stanley DW, Inc., on or about May 13, 2005. The Submission Agreement of Respondent, Morgan Stanley DW, Inc., was signed on or about April 14, 2005.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty, negligence, unfair practices, respondeat superior, and failure to supervise. The causes of action related to the recommendation and purchase of various securities. Claimant alleged that she incurred substantial tax penalties due to the withdrawal of her IRA funds that were transferred into her personal account. Claimant also alleged that David Jeffrey Morris recommended that Claimant engage in short term trading of stocks, which were unsuitable given her investment objectives.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant failed to state a claim upon which relief can be granted; Claimant's claims are barred by the doctrines of waiver, ratification, and estoppel; Claimant failed to mitigate her damages; Claimant assumed the risks and had full control over the investment decisions in accounts at issue; any losses incurred were the result of market price fluctuations; and Claimant's losses, if any, were proximately caused by Claimant's own decisions, conduct and/or negligence.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$48,000.00
Interest	Unspecified
Costs, including claim filing fee	Unspecified
Other Equitable Relief	Unspecified

Respondent requested that the claims asserted against it be denied in their entirety.

### **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 NASD Dispute Resolution ("NASD").

### **AWARD**

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

- 1.) Claimant's claims, each and all, are hereby denied with prejudice;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 3.) Any relief not specifically enumerated 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 = \$ 175.00

### **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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is Morgan Stanley DW, Inc.

Member surcharge = \$ 875.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 1,000.00

### **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 \$450.00 = \$ 900.00

Pre-hearing conferences: August 2, 2005 1 session  
November 22, 2005 1 session

Four (4) Hearing sessions x \$450.00 = \$ 1,800.00

Hearing Dates: January 18, 2006 2 sessions  
January 19, 2006 2 sessions

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Total Forum Fees = \$ 2,700.00

The Arbitration Panel has assessed \$1,350.00 of the forum fees to Cynthia Reithel.

The Arbitration Panel has assessed \$1,350.00 of the forum fees to Morgan Stanley DW, Inc.

**Fee Summary**

Claimant, Cynthia Reithel, is liable for:

Initial Filing Fee	= \$ 175.00
Forum Fees	= \$ 1,350.00
Total Fees	= \$ 1,525.00
Less payments	= \$ 675.00
Balance Due NASD Dispute Resolution	= \$ 850.00

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

Member Fees	= \$ 2,625.00
Forum Fees	= \$ 1,350.00
Total Fees	= \$ 3,975.00
Less payments	= \$ 1,175.00
Balance Due NASD Dispute Resolution	= \$ 2,800.00

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

**ARBITRATOR**

Leonard Arthur Nelson - Public Arbitrator, Presiding Chair

Arbitrator's signature:

/s/ Leonard Arthur Nelson  
Leonard Arthur Nelson  
Public Arbitrator, Presiding Chair

January 20, 2006  
Signature Date

January 20, 2006  
Date of Service (For NASD office use only)

**ARBITRATOR**

**Leonard Arthur Nelson - Public Arbitrator, Presiding Chair**

Arbitrator's signature:

Leonard Arthur Nelson

Leonard Arthur Nelson  
Public Arbitrator, Presiding Chair

Jan. 20, 2006  
Signature Date

**Date of Service (For NASD office use only)**