

**PACIFIC EXCHANGE, INC.
115 Sansome Street
San Francisco, CA 94104**

In The Matter Of The Arbitration Between:

Janine E. Zebley, individually and as
Trustee of the Zebley Living Trust
DTD 01/01/1990,

Claimant

v.

Morgan Stanley DW, Inc.

Respondent

PCX CASE #: 04-S002

DECISION

The undersigned Arbitrators, having read and considered the Claim submitted by Claimant and the Answer of Respondent, and having considered evidence presented at the hearings on August 25 - 26, 2005, and November 21, 2005, hereby render the following Decision pursuant to Rule 12 of the Pacific Exchange:

REPRESENTATION OF PARTIES

Of Claimant:

Jeffrey M. Jones, Esq.
Law Offices of Jeffrey M. Jones, P.C.

Of Respondent:

Gilbert R. Serota, Esq.
Kevin H. Lewis, Esq.
Howard, Rice, Nemerovski, Canady, Falk & Rabkin

HISTORY OF CASE

Statement of Claim filed: February 10, 2004

Statement of Answer filed: April 7, 2004

Prehearing Conferences: December 14, 2004
July 27, 2005
August 15, 2005
August 19, 2005

Hearing Dates: August 25 - 26, 2005
November 21, 2005

SUMMARY OF CASE

Claimant alleged that respondent was in breach of its fiduciary relationship to claimant, recommended unsuitable investments, failed to diversify claimant's account, committed fraud and deceit, was negligent and was in breach of contract.

Respondent denied claimant's claims. Respondent also asserted that claimant ratified the disputed transactions and that claimant failed to mitigate her damages.

ISSUES PRESENTED

Whether the allegations alleged by claimant were true.

RELIEF REQUESTED

Claimant requested \$317,018.97.00 in out-of-pocket damages, plus an alternative portfolio analysis of damages. Claimant also requested punitive damages, attorney's fees and rescission.

Respondent requested that claimant's claims be denied and that the CRD record of Russell Abbott be expunged. Respondent also requested that respondent recover the costs of its defense, including attorney's fees.

FINDINGS AND DECISION

After considering the argument and evidence of both the Claimant and Respondent in this matter, the undersigned Arbitrators make the final determination and decision of the issues presented, as set forth below:

A. Decision

1. The Panel finds in favor of Respondent. Claimant's claims are denied.
2. All claims for monetary damages, punitive damages, costs and attorney fees are denied.
3. 2/3 of the Forum Fees are assessed against the Claimant and 1/3 of the Forum Fees are assessed against the Respondent. Otherwise, each party shall bear its own costs.
4. The Panel recommends that all reference to this action be expunged from the Central Registration Depository ("CRD") record of Russell Abbott, with the understanding that Mr. Abbott must obtain confirmation from a court of competent jurisdiction before his CRD record will be expunged.

B. Other Determinations

1. Respondent shall reimburse Claimant's non-refundable filing fee: ☐ YES ☒ NO
2. Respondent shall reimburse Claimant's hearing session deposit: ☐ YES ☒ NO

3. Parties shall bear their own costs of arbitration:

☒ YES ☐ NO

4. Should this matter be referred to any regulatory organization (SRO or SEC) for disciplinary investigation of rule violations or violation federal securities laws?

☐ YES ☒ NO

C. Forum Fees

Two prehearing conferences (Full Panel)	X	\$750 =	\$1,500
Two prehearing conferences (Chair Only)	X	\$300 =	\$ 600
<u>Six hearing sessions</u>	<u>X</u>	<u>\$750 =</u>	<u>\$4,500</u>

Total Forum Fees = \$6,500

Forum fees, in the amount of \$4,400.00 are assessed against Claimant. Forum fees, in the amount of \$2,200.00 are assessed against Respondent.

Dated: 12/1/05


Lester Friedman, Chair

Dated: _____

Jerome P. Mednick, Public Arbitrator

Dated: _____

Jane F. Gundermann, Industry Arbitrator

3. Parties shall bear their own costs of arbitration:

☒ YES ☐ NO

4. Should this matter be referred to any regulatory organization (SRO or SEC) for disciplinary investigation of rule violations or violation federal securities laws?

☐ YES ☒ NO

C. Forum Fees

Two prehearing conferences (Full Panel)	X	\$750 =	\$1,500
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<u>Six hearing sessions</u>	<u>X</u>	<u>\$750 =</u>	<u>\$4,500</u>

Total Forum Fees = \$6,600

Forum fees, in the amount of \$4,400.00 are assessed against Claimant. Forum fees, in the amount of \$2,200.00 are assessed against Respondent.

Dated: _____

Lester Friedman, Chair

Dated: 12/5/05

Jerome P. Mednick, Public Arbitrator

Dated: _____

Jane F. Gundermann, Industry Arbitrator

3. Parties shall bear their own costs of arbitration:

☒ YES ☐ NO

4. Should this matter be referred to any regulatory organization (SRO or SEC) for disciplinary investigation of rule violations or violation federal securities laws?

☐ YES ☒ NO

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Total Forum Fees = \$6,600

Forum fees, in the amount of \$4,400.00 are assessed against Claimant. Forum fees, in the amount of \$2,200.00 are assessed against Respondent.

Dated: _____

Lester Friedman, Chair

Dated: _____

Jerome P. Mednick, Public Arbitrator

Dated: 12/2/05



Jane F. Gundermann, Industry Arbitrator