

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

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In the Matter of the Arbitration Between:

Janice Davis f/k/a Janice Needles, Claimant v. Morgan Stanley DW, Inc. and Mark B. Schumaker,  
Respondents

Case Number: 05-00308

Hearing Site: Phoenix, Arizona

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Nature of the Dispute: Customer v. Member and Associated Person

**REPRESENTATION OF PARTIES**

For Claimant:

Barry Kirschner, Esq.  
Waterfall, Economidis, Caldwell, Hanshaw,  
& Villamana, P.C.  
Tucson, Arizona

For Respondents:

Todd E. Hale, Esq.  
Lewis and Roca, LLP  
Tucson, Arizona

**CASE INFORMATION**

Statement of Claim filed: January 19, 2005

Claimant's Uniform Submission Agreement signed: January 12, 2005

Joint Statement of Answer filed by Respondents: March 9, 2005

Respondent Morgan Stanley DW Inc.'s Uniform Submission Agreement signed: March 30, 2005

Respondent Mark B. Schumaker's Uniform Submission Agreement signed: March 30, 2005

**CASE SUMMARY**

Claimant alleged breach of fiduciary duty, misrepresentations, breach of contract, negligence, failure to execute, omission of facts, and suitability, involving unspecified securities and an annuity through Northbrook Life Insurance Company.

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

### **RELIEF REQUESTED**

In her Statement of Claim, Claimant requested compensatory damages in the amount of \$250,000.00, exemplary damages in the amount of \$200,000.00, and costs in the amount of \$5,000.00.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety and that all hearing fees and costs be assessed to Claimant. Additionally, Respondent Mark B. Schumaker requested that the Panel order that his record be expunged of any reports relating to Claimant's allegations.

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

The parties agreed that this matter would proceed to hearing on an expedited basis.

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, testimony, evidence presented at the hearing, and the post-hearing submissions, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent Morgan Stanley DW, Inc. is liable to and shall pay Claimant \$120,000.00 in compensatory damages.
- 2) Respondent Morgan Stanley DW, Inc. is liable to and shall pay Claimant \$300.00 as reimbursement of filing fee.
- 3) Claimant's request for exemplary damages is denied.
- 4) Respondent Mark B. Schumaker is dismissed with prejudice.
- 5) Respondent Mark B. Schumaker's request for expungement is denied.
- 6) The parties shall bear their respective costs, including attorney's fees.
- 7) All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the *NASD Code of Arbitration Procedure* ("Code"), the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 300.00
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#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Morgan Stanley DW, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 2,750.00</u>
<b>Total Member Fees</b>	<b>= \$ 5,200.00</b>

#### **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 conference session with the Panel @ \$1,125.00/session	= \$ 1,125.00
Pre-hearing conference: March 17, 2005	1 session

Four (4) Hearing sessions @ \$1,125.00/session	= \$ 4,500.00
Hearings: April 26, 2005	2 sessions
April 27, 2005	2 sessions

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<b>Total Forum Fees</b>	<b>= \$ 5,625.00</b>
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The Panel assessed \$5,625.00 of the forum fees to Respondent Morgan Stanley DW, Inc.

**Fee Summary**

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
<u>Less payments</u>	<u>= \$(1,425.00)</u>
<b>Refund Due Claimant</b>	<b>= \$(1,125.00)</b>

2. Respondent Morgan Stanley DW, Inc. is charged with the following fees and costs:


Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	<u>= \$ 5,625.00</u>
Total Fees	= \$10,825.00
<u>Less payments</u>	<u>= \$( 2,450.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 8,375.00</b>

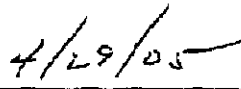
All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

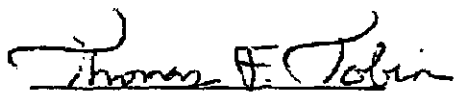
**ARBITRATION PANEL**

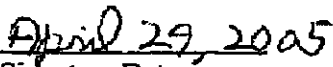
Lee R. Barbakoff	-	Public Arbitrator, Presiding Chair
Thomas F. Tobin	-	Public Arbitrator
Raymond R. Wallage	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
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Lee R. Barbakoff  
Chair, Public Arbitrator

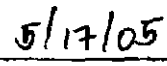
  
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Thomas F. Tobin  
Public Arbitrator

  
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Raymond R. Wallage  
Non-Public Arbitrator

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Signature Date

  
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Date of Service

ARBITRATION PANEL

Lee R. Barbakoff	-	Public Arbitrator, Presiding Chair
Thomas F. Tobin	-	Public Arbitrator
Raymond R. Wallage	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

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Lee R. Barbakoff  
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Signature Date

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Thomas F. Tobin  
Public Arbitrator

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

  
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Raymond R. Wallage  
Non-Public Arbitrator

4-29-05  
Signature Date

5/3/05  
Date of Service