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

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In the Matter of the Arbitration Between:

Name of the Claimant

Donna LaFlamme, as  
Beneficiary of the Donna M.  
LaFlamme Ph.D. IRA Standard/  
SEP DTD.4/6/00

Case Number: 05-01056

Names of the Respondents

Morgan Stanley Dean Witter, Inc.  
Barbara Zech

Hearing Site: Boca Raton, Florida

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

**REPRESENTATION OF PARTIES**

For Donna LaFlamme, as Beneficiary of the Donna M. LaFlamme Ph.D. IRA Standard/SEP DTD.4/6/00 ("LaFlamme"), hereinafter referred to as "Claimant": Lonnie K. Martens, Esq., The Martens Law Firm, Tequesta, Florida.

For Morgan Stanley Dean Witter, Inc. ("MSDW") and Barbara Zech ("Zech"), hereinafter collectively referred to as "Respondents": Todd A. Zuckerbrod, Esq., Greenberg Traurig, West Palm Beach, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: March 1, 2005.

Claimant signed the Uniform Submission Agreement: February 25, 2005.

Statement of Answer filed by Respondents on or about: May 13, 2005.

Respondent MSDW signed the Uniform Submission Agreement: March 21, 2005.

Respondent Zech signed the Uniform Submission Agreement: May 5, 2005.

Motion to Dismiss and Impose Sanctions filed by Respondents on or about: April 13, 2006.

**CASE SUMMARY**

Claimant asserted the following causes of action: 1) negligence; 2) misrepresentation; 3) breach of fiduciary duty; and 4) unsuitability. The causes of action relate to Claimants' investments in, including but not limited to, unspecified Morgan Stanley proprietary funds and unit investment trusts.

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

**RELIEF REQUESTED**

Claimant requested: 1) compensatory damages of approximately \$17,000.00; 2) costs of the proceeding; 3) interest as appropriate; and 4) for such other relief as is just and proper.

Respondents requested that: 1) Claimant's claims against Respondent be dismissed in their entirety; and, 2) Respondent Zech's NASD Central Registration Depository ("CRD") records of this matter be expunged.

**OTHER ISSUES CONSIDERED AND DECIDED**

The Arbitrator deferred ruling on Respondents' Motion to Dismiss until the evidentiary hearing. During the evidentiary hearing, the Arbitrator denied Respondents' Motion to Dismiss and Impose Sanctions.

During the evidentiary hearing, Respondent Zech made an ore tenus motion for the expungement of her CRD records.

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, evidence and testimony presented at the evidentiary hearing, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

All of Claimant's claims for relief are denied.

The Arbitrator recommends the expungement of all reference to the above captioned arbitration from Respondent Zech's registration records maintained by the CRD, with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Zech must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130, the Arbitrator has made the following affirmative findings of fact:

The claim, allegation, or information is false.

Any and all other claims for relief not specifically mentioned herein, including Claimant's claims for interest and costs, are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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 = \$125.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent MSDW is a party and a member firm.

Member surcharge = \$425.00

Total Member Fees = \$425.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

March 1 – 3, 2006 adjournment requested by Claimant.

The Arbitrator has assessed an adjournment fee of \$450.00 to Claimant.

#### **Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

March 1 – 3, 2006 adjournment request by Claimant = \$100.00

The Arbitrator has assessed the \$100.00 three-day cancellation fees to Claimant.

#### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

There were no injunctive relief fees assessed during these proceedings.

#### **Forum Fees and Assessments**

The Arbitrator has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the Arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

Five (5) Pre-hearing sessions with the Arbitrator @ \$450.00/session = \$2,250.00

Pre-hearing conferences: June 17, 2005 1 session

December 5, 2005 1 session

January 18, 2006 1 session

February 16, 2006 1 session  
February 28, 2006 1 session

Six (6) Hearing Sessions with the Arbitrator @ \$450.00/session = \$2,700.00

Hearing Dates: April 18, 2006 2 sessions  
April 19, 2006 2 sessions  
April 20, 2006 2 sessions

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Total Forum Fees = \$4,950.00

The Arbitrator has assessed forum fees in the amount of \$2,475.00 to Claimant.

The Arbitrator has assessed forum fees in the amount of \$2,475.00 to Respondents, jointly and severally.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 125.00
Forum Fees	= \$2,475.00
Three-day Cancellation Fee	= \$ 100.00
<u>Adjournment Fee</u>	<u>= \$ 450.00</u>
Total Fees	= \$3,150.00
<u>Less Payments</u>	<u>= \$1,125.00</u>
Balance Due NASD Dispute Resolution	= \$2,025.00

Respondent MSDW is solely liable for:

<u>Member Fees</u>	<u>= \$ 425.00</u>
Total Fees	= \$ 425.00
<u>Less Payments</u>	<u>= \$ 425.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$2,475.00</u>
Total Fees	= \$2,475.00
<u>Less payments</u>	<u>= \$1,175.00</u>
Balance Due NASD Dispute Resolution	= \$1,300.00

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

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**ARBITRATOR**

**Barth Satuloff, CPA**

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Berth Sauloff CPA

**Barth Satuloff, CPA**

### Public Arbitrator

## Public Arbitrator

April 21, 2006

**Signature Date**

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