

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

**Cindy and Wally D. Lien, Jt Tenants, Cindy Lien IRA and Wally D. Lien IRA, Claimants v.
Morgan Stanley DW Inc., Respondent**

Case Number: 05-01345

Hearing Site: Phoenix, Arizona

Nature of the Dispute: Customers v. Member

REPRESENTATION OF PARTIES

For Claimants:

**William B Young, Jr., Esq.
Hooper & Weiss, LLC
Orlando, Florida**

For Respondent:

**Jonathan D. Robbins, Esq.
Morgan Stanley DW Inc.
San Francisco, California**

CASE INFORMATION

Statement of Claim filed: March 8, 2005

Amended Statement of Claim filed: September 15, 2005

Claimants' Joint Uniform Submission Agreement signed: August 7, 2003

Statement of Answer filed by Respondent: October 31, 2005

Respondent's Uniform Submission Agreement signed: October 30, 2005

CASE SUMMARY

In their initial Statement of Claim, Claimants alleged unsuitability, breach of contract, breach of fiduciary duty, violation of section 10(b) and 10(b)5 of the Securities Exchange Act, common law fraud, negligence, failure to supervise, violation of the NYSE Rules 401 and 405, and violation of NASD Rules 2110, 2120, 2310, and 3010, respondeat superior, and fraudulent concealment. Claimants' allegations involved investments in Morgan Stanley Dean Witter Variable Annuity Contract 11, Emulex Corp., Global Crossing LTD, WebMD Corp. and Wireless Facilities, Inc.

In their Amended Statement of Claim, Claimants reiterated their allegations and, in addition, alleged fraudulent concealment of material facts relative to Claimants' accounts.

Respondent denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested \$293,572.09 in compensatory damages, disgorgement of commissions, fees and other charges paid by Claimants to Respondents, unspecified punitive damages, pre- and post-judgment interest and costs, including attorney's fees.

Respondent requested dismissal of the Claimants' Statements of Claim in their entirety.

OTHER ISSUES CONSIDERED AND DECIDED

On October 31, 2005, Respondent moved the Panel to Dismiss the Statements of Claim. On January 4, 2006, a telephonic pre-hearing conference was held, attended by Parties and the Panel. After due deliberation in an executive session, the Panel granted the motion.

FINDINGS AND CONCLUSIONS

Respondent based its motion on the following grounds:

1. Rule 10304 of the NASD *Code of Arbitration Procedure* (Code) requires that claims be filed within six years after the occurrence or event giving rise to the controversy.
2. Federal and State of Arizona Statutes of Limitation barred the claims.

No affidavits or other documents were given to the Panel showing that transactions occurred in any of the three accounts after May 1998, with one exception: an Annuity in Acct.# 250-115004 was redeemed by Claimants in August, 2001.

Claimants filed their Statement of Claim on March 8, 2005. However, NASD Dispute Resolution did not receive Claimants' Uniform Submission Agreement dated August 7, 2003, until April 5, 2005.

The Panel finds that the claims of the three Claimants are not eligible for Arbitration pursuant to Rule 10204 of the Code. The Panel also grants Respondent's Motion to Dismiss the claims alleged in the Amended Statement of Claim as time barred under Federal and State of Arizona Statutes of Limitation.

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 Pleading and Respondent's Motion to Dismiss, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent's Motion to Dismiss the Claimants' claims is granted.
- 2) Claimants' claims are dismissed with prejudice in their entirety.
- 3) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the 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>
Total Member Fees	= \$ 5,200.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

(2) Pre-hearing conference sessions with the Panel @ \$1,125.00/session = \$2,250.00
Pre-hearing conferences: November 29, 2005 1 session
January 4, 2006 1 session

Total Forum Fees = \$ 2,250.00

1. The Panel assessed \$1,687.50 of the forum fees jointly and severally to Claimants.

2. The Panel assessed \$562.00 of the forum fees Respondent.

Fee Summary

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 1,687.50
Total Fees	= \$ 1,987.50
<u>Less payments</u>	= \$(1,425.00)
Balance Due NASD Dispute Resolution	= \$ 562.50

2. Respondent is charged with the following fees and costs:

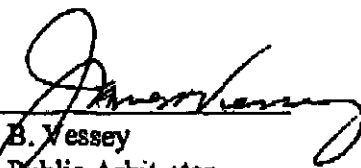
Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 562.50
Total Fees	= \$ 5,762.50
<u>Less payments</u>	= \$(2,450.00)
Balance Due NASD Dispute Resolution	= \$ 3,312.50

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.

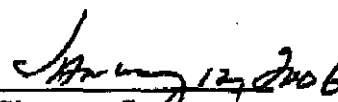
ARBITRATION PANEL

James B. Vessey	-	Public Arbitrator, Presiding Chair
S. Jeffrey Minker	-	Public Arbitrator
Bruce A. Lindvig	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



James B. Vessey
Chair, Public Arbitrator



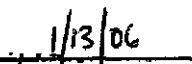
Signature Date

S. Jeffrey Minker
Public Arbitrator

Signature Date

Bruce A. Lindvig
Non-Public Arbitrator

Signature Date



Date of Service

ARBITRATION PANEL

James B. Vessey	-	Public Arbitrator, Presiding Chair
S. Jeffrey Minker	-	Public Arbitrator
Bruce A. Lindvig	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

James B. Vessey
Chair, Public Arbitrator

Signature Date



S. Jeffrey Minker
Public Arbitrator

2/1/06

Signature Date

Bruce A. Lindvig
Non-Public Arbitrator

Signature Date

Date of Service

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S. Jeffrey Minker
Bruce A. Lindvig

- Public Arbitrator, Presiding Chair
- Public Arbitrator
- Non-Public Arbitrator


Concurring Arbitrators' Signatures

James B. Vessey
Chair, Public Arbitrator

Signature Date

S. Jeffrey Minker
Public Arbitrator

Signature Date



Bruce A. Lindvig
Non-Public Arbitrator

11/13/06
Signature Date

11/13/06
Date of Service