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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Carole Cavaliere

Case Number: 05-01478

Name of the Respondent  
Morgan Stanley DW, Inc.

Hearing Site: Orlando, Florida

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

For Carole Cavaliere, hereinafter referred to as "Claimant": Thomas F. Shine, Esq., Indiatlantic, Florida.

For Morgan Stanley DW, Inc., ("MSDW") hereinafter referred to as "Respondent": Doreen S. Young Esq., Of Counsel, Morgan Stanley DW, Inc., Tampa, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: March 24, 2005.

Claimant signed the Uniform Submission Agreement: March 18, 2005.

Answer and Defenses of Respondent filed on or about: May 23, 2005.

Respondent signed the Uniform Submission Agreement: May 20, 2005.

**CASE SUMMARY**

Claimant asserted the following causes of action: 1) breach of fiduciary duty; 2) breach of contract; 3) omission; 4) negligence; and, 5) respondeat superior. The cause of action relates to Angela Lyon's Transfer of Death Disclosure Agreement and the subsequent transfer of funds in Claimant's MSDW account.

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

**RELIEF REQUESTED**

Claimant requested: 1) compensatory damages in the amount of \$43,000.00; 2) prejudgment interest at the Florida Statutory interest rate from July 2, 2004 through the date of the arbitration award; 3) post-award interest at the Florida Statutory interest rate from the date of the arbitration award through the date of payment of the award; and, 4) such other relief that the undersigned arbitrators (the "Panel") may

find appropriate under the circumstances.

Respondent did not delineate a relief request.

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

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 Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimant's claims for relief, including claims for interest, are denied.

Parties are to bear their own costs.

Any and all other claims for relief not specifically addressed herein 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	= \$ 175.00
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#### **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 is a party and a member firm.

Member surcharge	= \$ 875.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$1,000.00</u>
Total Member Fees	= \$2,625.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No requests for adjournments were filed in this matter for which fees were assessed.

#### **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:

There were no three-day cancellation fees assessed during these proceedings.

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

One (1) Pre-hearing session with the Panel @ \$600.00/session	= \$ 600.00
Pre-hearing conference: July 29, 2005 1 session	

One (1) Pre-hearing session with the Chairperson @ \$450.00/session	=\$ 450.00
Pre-hearing conference: January 24, 2006 1 session	

Four (4) Hearing Sessions with the Panel @ \$600.00/session	=\$ 2,400.00
Hearing Dates: February 7, 2006 2 sessions	
February 8, 2006 2 sessions	

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Total Forum Fees	= \$ 3,450.00
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The Panel has assessed the total forum fees of \$1,725.00 to Claimant

The Panel has assessed the total forum fees of \$1,725.00 to Respondent.

**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	= \$ 175.00
Forum Fees	= \$ 1,725.00
Total Fees	= \$ 1,900.00
Less payments	= \$ 775.00
Balance Due NASD Dispute Resolution	= \$ 1,125.00

Respondent is solely liable for:

Forum Fees	= \$ 1,725.00
Member Fees	= \$ 2,625.00

Total Fees	= \$ 4,350.00
<u>Less Payments</u>	<u>= \$ 2,625.00</u>
Balance Due NASD Dispute Resolution	= \$ 1,725.00

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

**ARBITRATION PANEL**

Charles Tindell, Esq.	Public Arbitrator, Presiding Chairperson
Richard J. Fuller, CPA	Public Arbitrator
Gregory L. Hess	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
Charles Tindell, Esq.  
Public Arbitrator, Presiding Chairperson

February 13, 2006  
Signature Date

/s/  
Richard J. Fuller, CPA  
Public Arbitrator

February 10, 2006  
Signature Date

/s/  
Gregory L. Hess  
Non-Public Arbitrator

February 13, 2006  
Signature Date

February 14, 2006  
Date of Service (For NASD Dispute Resolution office use only)

Total Fees	= \$ 4,350.00
Less Payments	= \$ 2,625.00
Balance Due NASD Dispute Resolution	= \$ 1,725.00

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**ARBITRATION PANEL**

Charles Tindell, Esq.  
Richard J. Fuller, CPA  
Gregory L. Hess

Public Arbitrator, Presiding Chairperson  
Public Arbitrator  
Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



Charles Tindell, Esq.  
Public Arbitrator, Presiding Chairperson

2-13-06

Signature Date

Richard J. Fuller, CPA  
Public Arbitrator

Signature Date

Gregory L. Hess  
Non-Public Arbitrator

Signature Date

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

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Charles Tindell, Esq.  
Richard J. Fuller, CPA  
Gregory L. Hess

Public Arbitrator, Presiding Chairperson  
Public Arbitrator  
Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Charles Tindell, Esq.  
Public Arbitrator, Presiding Chairperson

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



\_\_\_\_\_  
Richard J. Fuller, CPA  
Public Arbitrator

2/10/06  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Gregory L. Hess  
Non-Public Arbitrator

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

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ARBITRATION PANEL

Charles Tindell, Esq.  
Richard J. Fuller, CPA  
Gregory L. Hess

Public Arbitrator, Presiding Chairperson  
Public Arbitrator  
Non-Public Arbitrator

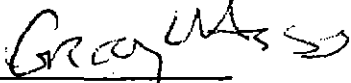
Concurring Arbitrators' Signatures

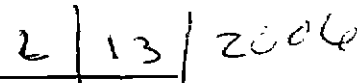
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Charles Tindell, Esq.  
Public Arbitrator, Presiding Chairperson

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Signature Date

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Public Arbitrator

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Gregory L. Hess  
Non-Public Arbitrator

  
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