

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant

Gloria Stanley

and

Case Number: 05-01902

Hearing Site: Oklahoma City, Oklahoma

Name of Respondent

Morgan Stanley DW, Inc.

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**NATURE OF DISPUTE**

Customer v. Member

**REPRESENTATION OF PARTIES**

Gloria Stanley ("**Claimant**") was originally represented by A. Daniel Woska, Esq., of Woska & Hayes, LLP, Oklahoma, City, Oklahoma, until September 15, 2005. Claimant subsequently participated pro se.

Morgan Stanley DW, Inc. ("**Respondent**") was represented by David R. Maurer, Esq., Morgan Stanley DW, Inc., San Francisco, California.

**CASE INFORMATION**

The Statement of Claim was filed on or about April 11, 2005. The Submission Agreement of Claimant was signed on or about November 12, 2004.

A Statement of Answer was filed by Respondent on or about July 1, 2005. The Submission Agreement of Respondent was signed on or about July 1, 2005 by David R. Maurer, Esq. Vice President, Morgan Stanley DW, Inc.

Respondent's Motion to Dismiss was filed on or about March 1, 2006.

Claimant's Response to Respondent's Motion to Dismiss was filed on or about March 28, 2006.

Respondent's Renewed Motion to Dismiss was filed on or about July 7, 2006.

Claimant's subsequent correspondence regarding Respondent's Renewed Motion to Dismiss was filed on or about August 11, 2006.

Respondent's response to Claimant's correspondence regarding Respondent's Renewed Motion to Dismiss was filed on or about August 16, 2006.

### **CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty; breach of contract; unsuitability; failure to diversify; failure to supervise; gross negligence; failure to hedge; violation of NASD Rules of Fair Practice, Article III; violation of Oklahoma Statute Section 408; and violation of the Consumer Protection Act. The causes of action related to the recommendation and purchase of various unspecified securities. Claimant alleged that Respondent recommended unsuitable investments, which resulted in substantial losses to her account.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant approved, participated in and ratified the securities transactions about which Claimant now complains; Claimant's losses, if any, were proximately caused by her own decisions, conduct and/or negligence, not by any action or inaction on the part of Morgan Stanley; the principle of laches bars Claimant's claims; the doctrine of estoppel bars Claimant's claims; and Claimant failed to state a claim upon which this Panel could award relief.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$80,000.00 in compensatory damages, plus interest, her costs and attorneys' fees and other relief the Panel deemed just and proper.

Respondent requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

On or about April 11, 2006, the Panel heard oral arguments in regard to Respondent's Motion to Dismiss. On or about April 11, 2006, the Panel entered an Order denying the motion.

The Panel heard oral arguments in regard to Respondent's Renewed Motion to Dismiss, on August 2, 2006 and August 7, 2006. On or about August 30, 2006, the Panel entered an Order granting Respondent's Renewed Motion for Dismissal with prejudice.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the pre-hearings, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimant's claims, each and all, are dismissed against Respondent, Morgan Stanley DW, Inc., with prejudice;
- 2) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 3) Any relief not specifically enumerated, including punitive damages and attorneys' fees, is hereby denied with prejudice.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee = \$ 225.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firm is Morgan Stanley DW, Inc.

Member surcharge = \$1,100.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$1,700.00

### **Forum Fees and Assessments**

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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:

Four (4) Pre-hearing sessions with Panel x \$750.00	= \$3,000.00
Pre-hearing conferences:	
March 7, 2006	1 session
April 11, 2006	1 session
August 2, 2006	1 session
August 7, 2006	1 session
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Total Forum Fees	= \$3,000.00

The Arbitration Panel has assessed \$1,500.00 of the forum fees to Gloria Stanley.

The Arbitration Panel has assessed \$1,500.00 of the forum fees to Morgan Stanley DW, Inc.

### **Fee Summary**

Claimant, Gloria Stanley, is liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$1,500.00
Total Fees	= \$1,725.00
Less payments	= \$ 975.00
Balance Due NASD Dispute Resolution	= \$ 750.00

Respondent, Morgan Stanley DW, Inc., is liable for:

Member Fees	= \$3,550.00
Forum Fees	= \$1,500.00
Total Fees	= \$5,050.00
Less payments	= \$3,500.00
Balance Due NASD Dispute Resolution	= \$1,500.00

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

**ARBITRATION PANEL**

Edwin E. O'Brien - Public Arbitrator, Presiding Chair  
David A. Laughlin - Public Arbitrator  
Theron L. Vanlandingham, CFP - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Edwin E. O'Brien  
Edwin E. O'Brien  
Public Arbitrator, Presiding Chair

09/01/06  
Signature Date

/s/ David A. Laughlin  
David A. Laughlin  
Public Arbitrator

09/05/06  
Signature Date

/s/ Theron L. Vanlandingham  
Theron L. Vanlandingham  
Non-Public Arbitrator

09/01/06  
Signature Date

09/01/06  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

**Edwin E. O'Brien - Public Arbitrator, Presiding Chair**  
**David A. Laughlin - Public Arbitrator**  
**Theron L. Vanlandingham, CFP - Non-Public Arbitrator**

**Concurring Arbitrators:**

*Edwin E. O'Brien*  
Edwin E. O'Brien  
Public Arbitrator, Presiding Chair

September 1, 2006  
Signature Date

**David A. Laughlin**  
**Public Arbitrator**

**Signature Date**

**Theron L. Vanlandingham,  
Non-Public Arbitrator**

**Signature Date**

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


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Concurring Arbitrators:

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Edwin E. O'Brien  
Public Arbitrator, Presiding Chair

  
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David A. Laughlin  
Public Arbitrator

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Signature Date

9-05-06  
\_\_\_\_\_  
Signature Date

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Theron L. Vanlandingham,  
Non-Public Arbitrator

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Signature Date

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Signature Date

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Signature Date

  
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Non-Public Arbitrator

9-1-06  
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