

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

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In the Matter of the Arbitration Between:

Mary K. O'Leary, Claimant v. Morgan Stanley DW Inc. and Samuel S. Crawley,  
Respondents

Case Number: 05-02473

Hearing Site: Portland, Oregon

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

**REPRESENTATION OF PARTIES**

For Claimant:

Calvin N. Souther, Jr., Esq.  
Attorney at Law  
Portland, Oregon

For Respondents:

Jonathan D. Robbins, Esq.  
Morgan Stanley  
San Francisco, California

**CASE INFORMATION**

Statement of Claim filed: May 3, 2005

Claimant's Uniform Submission Agreement signed: May 3, 2005

Joint Statement of Answer filed by Respondents: August 16, 2005

Respondent Morgan Stanley DW Inc.'s Uniform Submission Agreement signed:  
August 16, 2005

Respondent Samuel S. Crawley's Uniform Submission Agreement signed:  
September 6, 2005

### **CASE SUMMARY**

Claimant alleged violation of Rule 17 promulgated under the Securities Act of 1934, violation of Oregon Securities Laws and Regulation particularly ORS 59.135 and OAR 441-205-0140, common law breach of fiduciary duty, and unsuitability/negligent supervision. Claimant alleged that she sustained damages as a result of the above-specified behavior from investments in various securities including America Online, Apple Computer, Applied Materials, Intel, Priceline, and Triqint Semi.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

### **RELIEF REQUESTED**

Claimant requested \$150,000.00 in compensatory damages, unspecified punitive damages, pre- and post-judgment interest at a rate of 9% per annum, return of commissions and costs, including attorney's fees.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety.

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

On April 21, 2006, Respondents moved the Panel to dismiss the Statement of Claim in total on the grounds that the Statute of Limitations for all claims had expired. On May 10, 2006, a telephonic pre-hearing conference was held, attended by the Parties and the Panel. After review of the file and due deliberation in an executive session, the Panel ruled that Claimant failed to file her Statement of Claim within the applicable statute of limitations for all but one potential claim; that all but that one potential claim were untimely; and that all claims except that one potential claim were dismissed with prejudice. In regards to the one potential claim which was filed within the applicable statute of limitations, the Panel was unable to determine whether Claimant intended to allege that the sale of two security positions on May 9, 2002 violated ORS 59.135 and, if so, how much Claimant was damaged by said violation and which respondent(s) was/were alleged to be liable. Claimant was given two weeks from the date of service of the Panel's ruling to file an Amended Statement of Claim alleging such a claim with clarity, precision, and detailed particularity. If Claimant did not intend to allege such a claim or failed to file a timely and compliant Amended Statement of Claim, all claims would be dismissed with prejudice. Claimant was served the Panel's ruling on May 24, 2006.

On or about June 9, 2006, Claimant informed the Panel that she would not file an Amended Statement of Claim and that she would discontinue her action against Respondents.

### **AWARD**

After considering the pleadings, and oral argument presented at the telephone pre-hearing conference on Respondents' Motion to Dismiss and Claimant's election to discontinue her action against the Respondents, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimant's claims are dismissed with prejudice.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 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	Waived
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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 assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. 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:

(2) Pre-hearing conference sessions with the Panel @ \$1,125.00/session = \$ 2,250.00  
Pre-hearing conferences: November 14, 2005 1 session  
May 10, 2006 1 session

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**Total Forum Fees** = \$ 2,250.00

1. The Panel assessed \$1,687.50 of the forum fees to Claimant.
2. The Panel assessed \$562.50 of the forum fees jointly and severally to Respondents.

**Fee Summary**

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

Forum Fees	= \$ 1,687.50
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 1,687.50</b>
2. Respondent Morgan Stanley DW, Inc. is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
Less payments	= \$(5,200.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>
3. Respondents are charged jointly and severally with the following fees and costs:

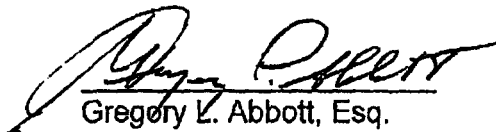
Forum Fees	= \$ 562.50
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 562.50</b>

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

Gregory L. Abbott, Esq.	-	Public Arbitrator, Presiding Chair
Nancy E. Hochman, Esq.	-	Public Arbitrator
William J. Chambers	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

  
\_\_\_\_\_  
Gregory L. Abbott, Esq.  
Chair, Public Arbitrator

6/27/06  
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Signature Date

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Nancy E. Hochman, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
William J. Chambers  
Non-Public Arbitrator

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

6/28/06  
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Date of Service

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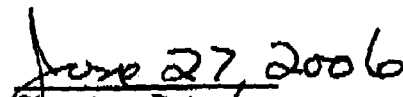
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