

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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Jerry Luther

Case Number: 05-02856

Name of the Respondent  
Morgan Stanley DW Inc.

Hearing Site: Birmingham, Alabama

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

For Jerry Luther, hereinafter referred to as "Claimant": Milton H. Fried, Esq., Woska & Hayes, LLP, Kingwood, Texas.

For Morgan Stanley DW Inc. ("MSDW") hereinafter referred to as "Respondent": Katherine R. Eldridge, Esq., Maynard, Cooper & Gale, P.C., Birmingham, Alabama.

**CASE INFORMATION**

Statement of Claim filed on or about: May 31, 2005.

Claimant signed the Uniform Submission Agreement: May 28, 2005.

Statement of Answer filed by Respondent on or about: August 25, 2005.

Respondent signed the Uniform Submission Agreement: July 12, 2005.

**CASE SUMMARY**

Claimant asserted the following causes of action in the Statement of Claim: 1) negligence; 2) intentional and negligent misrepresentation; 3) unsuitability; 4) failure to supervise; 5) control person liability under Section 20(A) of the Exchange Act, 15 U.S.C. Section 78(a); 6) breach of fiduciary duty; 7) breach of contract; 8) failure to diversify; 9) failure to hedge; 10) violations of NASD and New York Stock Exchange "know your customer" rules; 11) violation of NASD Rules of Fair Practice, Article III; 12) violation of Alabama Securities Act, Alabama Code 8-6-17; 13) unjust enrichment; and 14) breach of duty of good faith and fair dealing. The causes of action relate to Claimant's investments in B-shares of mutual funds including: the MSDW Technology Fund; the MSDW Capital Growth Fund; the MSDW Strategist Fund; the MSDW American Opportunities Fund; and, the MSDW European Growth Fund.

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 an amount in excess of \$500,000.00 including: a) all direct losses sustained in Claimant's account; b) all charges to Claimant's account; and, c) well-managed portfolio damages; 2) pre-judgment and post-judgment interest at the maximum

statutory rate from the date of the transactions until the date of any award, pursuant to Alabama law; 3) costs of this proceeding, including NASD forum fees and hearing session fees; 4) reasonable attorneys' fees under Alabama statutory law and common law as well as under the NASD and New York Stock Exchange Rules of Fair Practice, in an amount to be determined at the final hearing; 5) punitive damages; and, 6) all other and further relief to which he may be entitled.

Respondent requested that the undersigned arbitrators (the "Panel"): 1) dismiss the Statement of Claim; 2) award Respondent its forum fees, costs and reasonable attorneys' fees; and, 3) such other relief as the Panel deems appropriate.

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

On or about April 21, 2006, and after both parties presented their evidence, the Respondent made a motion to dismiss all the above listed claims made by Claimant. The Panel denied the general motion to dismiss but accepted the motion to dismiss the following claims: controlling person liability; breach of contract; failure to supervise; failure to hedge; violation of know your customer rules; and, violation of the securities laws.

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, the testimony and evidence presented on the remaining causes of action at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimant's remaining causes of action are dismissed, with prejudice.

The parties' requests for attorneys' fees are denied.

Any and all 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	=	\$ 300.00
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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 MSDW is a party and a member firm.

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

Hearing process fee	=	\$2,750.00
Total Member Fees	=	\$5,200.00

### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were assessed during these proceedings.

### **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:

No three-day cancellation fees were 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 arbitration Panel has 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 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 a single arbitrator @ \$450.00 per session	= \$ 450.00
Pre-hearing conference: April 5, 2006 1 session	

One (1) Pre-hearing session with the Panel @ \$1,125.00 per session	= \$1,125.00
Pre-hearing conference: November 11, 2005 1 session	

Seven (7) Hearing sessions @ \$1,125.00 per session	= \$7,875.00
Hearing sessions: April 19, 2006 2 sessions	
April 20, 2006 3 sessions	
April 21, 2006 2 sessions	

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Total Forum Fees	= \$9,450.00
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1. The Panel has assessed forum fees in the amount of \$4,725.00 to Claimant.
2. The Panel has assessed forum fees in the amount of \$4,725.00 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 are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were assessed during these proceedings.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$4,725.00
Total Fees	= \$5,025.00
Less payments	= \$1,575.00
Balance Due NASD Dispute Resolution	= \$3,450.00

Respondent is solely liable for:

Member Fees	= \$5,200.00
Forum Fees	= \$4,725.00
Total Fees	= \$9,925.00
Less payments	= \$5,850.00
Balance Due NASD Dispute Resolution	= \$4,075.00

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

**ARBITRATION PANEL**

James Francis Donovan	-	Public Arbitrator, Presiding Chairperson
Monique Michelle Wilkerson, M.S.	-	Public Arbitrator
John C. West	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
James Francis Donovan  
Public Arbitrator, Presiding Chairperson

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

/s/ \_\_\_\_\_  
Monique Michelle Wilkerson, M.S.  
Public Arbitrator

May 8, 2006  
Signature Date

/s/ \_\_\_\_\_  
John C. West  
Non-Public Arbitrator

May 8, 2006  
Signature Date

May 10, 2006  
\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution office use only)



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John C. West  
Non-Public Arbitrator

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Signature Date

5/8/06

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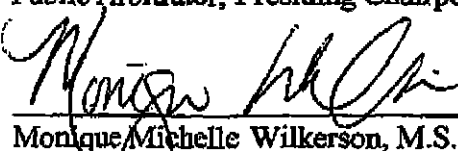
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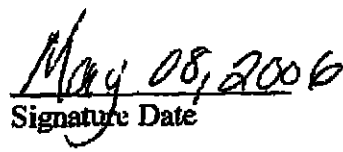
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 Public Arbitrator, Presiding Chairperson

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