

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Michael Broom, Kevin Broom, and Andrea Broom, Claimants v. Morgan Stanley DW Inc. and Kimberly Anne Blindheim, Respondents

Case Number: 05-05019

Hearing Site: Seattle, Washington

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

**REPRESENTATION OF PARTIES**

For Claimants Michael Broom, Kevin Broom, and  
Andrea Broom:

Kevin P. Sullivan, Esq.  
Sullivan & Thoreson  
Seattle, Washington

For Respondents Morgan Stanley DW Inc. and Kimberly  
Anne Blindheim:

Stephanie P. Berntsen,  
Esq.  
Thomas V. Dulcich, Esq.  
Schwabe, Williamson &  
Wyatt  
Seattle, Washington

**CASE INFORMATION**

Statement of Claim filed: September 22, 2005

Claimants Michael Broom, Kevin Broom, and Andrea Broom's Joint Uniform Submission Agreement signed: September 29, 2005

Joint Statement of Answer filed by Respondents Morgan Stanley DW Inc. and Kimberly Anne Blindheim: December 16, 2005

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

Respondent Kimberly Anne Blindheim's Uniform Submission Agreement signed:  
December 15, 2005

Reply to Respondents' Joint Statement of Answer filed by Claimants Michael Broom, Kevin Broom, and Andrea Broom: January 24, 2006

Sur-Reply to Claimants' Reply filed by Respondents Morgan Stanley DW Inc. and Kimberly Anne Blindheim: February 8, 2006

### **CASE SUMMARY**

Claimants asserted the following causes of action: negligence, suitability, violation of the Washington Securities Act, violation of Rule 10b-5 of the Securities Exchange Act, breach of fiduciary duty, misrepresentations and omissions, failure to supervise, breach of contract, and violation of the Washington Consumer Protection Act. Claimants' allegations involved Respondents' alleged purchase of, and overconcentration in, technology stocks in Claimants' father's IRA account.

Unless specifically admitted in their Answer, Respondents denied the allegations of wrongdoing set forth in Claimants' Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested unspecified compensatory damages, unspecified punitive damages, pre-judgment interest, return of at least \$30,000.00 in commissions, treble damages in the amount of \$10,000.00 pursuant to the Washington Consumer Protection Act, and costs, including attorney's fees.

Respondents requested dismissal of Claimants' Statement of Claim in its entirety and costs, including attorney's fees.

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

On December 16, 2005, Respondents filed a Motion to Dismiss. On March 20, 2006, Claimants filed an Opposition to Respondents' Motion to Dismiss re Statute of Limitations. On March 31, 2006, Respondents filed a Reply in Support of the Motion to Dismiss. On April 7, 2006, the parties and the Panel participated in a pre-hearing conference during which the Panel heard oral argument from the parties regarding Respondents' Motion to Dismiss. On May 1, 2006, the Panel issued an Order granting Respondents' Motion to Dismiss as to all claims, with the exception of Claimants' claim for violation of the Washington Consumer Protection Act, on the grounds that the claims were barred by applicable statutes of limitation.

On May 5, 2006, Claimants filed a Motion for Reconsideration of Order re Statute of Limitations Issues. On May 11, 2006, Claimants filed a Supplemental Memorandum in Support of Motion for Reconsideration of Dismissal Order. On May 26, 2006, Respondents filed an Opposition to Claimants' Motion for Reconsideration of Order re Statute of Limitations Issues. On June 5, 2006, Claimants filed a Rebuttal in Support of

Motion for Reconsideration. The Panel deliberated regarding Claimants' Motion for Reconsideration on June 9, 2006. On June 13, 2006, the Panel issued an Order denying Claimants' Motion for Reconsideration.

On May 23, 2006, Respondents filed a Motion to Dismiss Claimants' Consumer Protection Act claim. On June 6, 2006, Claimants filed an Opposition to Respondents' Motion to Dismiss Consumer Protection Act Claim. On June 21, 2006, Respondents filed a Reply Brief in Support of their Motion to Dismiss Claimants' Consumer Protection Act Claim. On June 28, 2006, the parties and the Panel participated in a pre-hearing conference during which the Panel heard oral argument regarding Respondents' Motion to Dismiss Claimants' Consumer Protection Act Claim. Acting in accordance with Rule 10325, the Panel decided to grant Respondents' Motion to Dismiss Claimants' Consumer Protection Act Claim.

On June 26, 2006, Claimants filed a second Motion for Reconsideration of Dismissal re Statute of Limitations. The Panel reviewed the motion and then deliberated regarding the motion on July 10, 2006. The Panel concluded that neither the substance of the motion nor its exhibits impacted in any way the Panel's prior decisions in this matter. Accordingly, the Panel denied Claimants' second Motion for Reconsideration of Dismissal re Statute of Limitations.

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, Respondents' Motions to Dismiss, the briefing that was filed in connection with these motions, and the parties' oral arguments, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimants' claims are dismissed without prejudice. The parties are referred to their judicial remedies.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) Any and all relief not specifically addressed herein, including punitive and treble damages, 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 = \$ 250.00

#### **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	= \$1,500.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$2,200.00
<b>Total Member Fees</b>	<b>= \$4,450.00</b>

#### **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. The following forum fees are assessed:

Three (3) pre-hearing conference sessions with the Panel		
@ \$1,000.00/session		= \$3,000.00
Pre-hearing conferences:	February 15, 2006	1 session
	April 7, 2006	1 session
	June 28, 2006	1 session
<b>Total Forum Fees</b>		<b>= \$3,000.00</b>

1. The Panel assessed \$2,500.00 of the forum fees jointly and severally to Respondents Morgan Stanley DW Inc. and Kimberly Anne Blindheim.
2. The Panel assessed \$500.00 of the forum fees jointly and severally to Claimants Michael Broom, Kevin Broom, and Andrea Broom.

**Fee Summary**

1. Claimants Michael Broom, Kevin Broom, and Andrea Broom are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 250.00
Forum Fees	= \$ 500.00
Total Fees	= \$ 750.00
Less payments	= \$(1,800.00)
<b>Refund Due Claimants</b>	<b>= \$(1,050.00)</b>

2. Respondent Morgan Stanley DW Inc. is charged with the following fees and costs:

Member Fees	= \$ 4,450.00
Forum Fees	= \$ 2,500.00
Total Fees	= \$ 6,950.00
Less payments	= \$(4,450.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 2,500.00</b>

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

**ARBITRATION PANEL**

<b>Jerome O. Cohen</b>	-	<b>Public Arbitrator, Presiding Chair</b>
<b>John M. Casey</b>	-	<b>Public Arbitrator</b>
<b>Sheryl Ann Seipp</b>	-	<b>Non-Public Arbitrator</b>

**Concurring Arbitrators' Signatures**



Jerome O. Cohen  
Chair, Public Arbitrator

7/12/06

Signature Date

Sheryl Ann Seipp  
Non-Public Arbitrator

Signature Date

**Dissenting Arbitrator's Signature**

John M. Casey  
Public Arbitrator

Signature Date

7/12/06

Date of Service

**ARBITRATION PANEL**

**Jerome O. Cohen**

-

**Public Arbitrator, Presiding Chair**

**John M. Casey**

-

**Public Arbitrator**

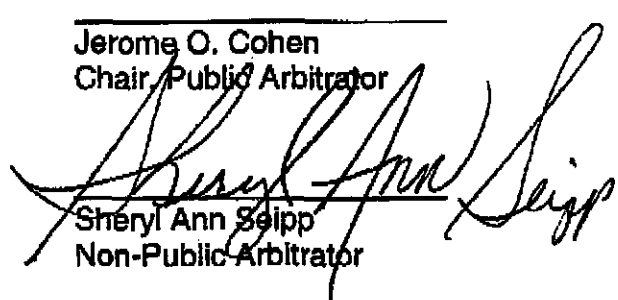
**Sheryl Ann Seipp**

-

**Non-Public Arbitrator**

**Concurring Arbitrators' Signatures**

Jerome O. Cohen  
Chair, Public Arbitrator



Sheryl Ann Seipp  
Non-Public Arbitrator

Signature Date

7/11/06

Signature Date

**Dissenting Arbitrator's Signature**

John M. Casey  
Public Arbitrator

Signature Date

7/12/06

Date of Service

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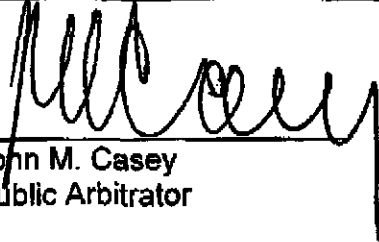
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Chair, Public Arbitrator

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Sheryl Ann Seipp  
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**Dissenting Arbitrator's Signature**

  
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