

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

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In the Matter of the Arbitration Between:

Name of Claimant

Clarissa Couch, Executor of  
Estate of John Couch

vs.

Case Number: 05-05714  
Hearing Site: Chicago, Illinois

Name of Respondent

Morgan Stanley DW, Inc.

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**NATURE OF THE DISPUTE**

Customer vs. Member

**REPRESENTATION OF PARTIES**

Clarissa Couch, Executor of Estate of John Couch ("Claimant"), was represented by John B. Veach, III, Esq., Falls & Veach, Asheville, North Carolina.

Morgan Stanley DW, Inc. ("Respondent") was represented by Aaron Danzer, Esq., Morgan Stanley, Chicago, Illinois.

**CASE INFORMATION**

The Statement of Claim was filed on or about November 8, 2005. The Submission Agreement of Claimant, Clarissa Couch, Executor of Estate of John Couch, was signed on or about October 19, 2005.

The Statement of Answer and Motion to Dismiss was filed by Respondent on or about February 24, 2006. The Submission Agreement of Respondent was signed on or about February 23, 2006 by Debra R. Volland.

Claimant filed a Response in Opposition to Motion to Dismiss on or about May 19, 2006. Respondent filed a Reply to Claimant's Response in Opposition to Motion to Dismiss on or about June 2, 2006.

Respondent filed a Motion for Leave to File a Counterclaim on or about October 9, 2006. Claimant filed a Response to the Motion for Leave to File a Counterclaim on or about October 17, 2006. Respondent filed a Reply in Support of its Motion for Leave to File a Counterclaim on or about October 17, 2006.

### **CASE SUMMARY**

Claimant asserted the following causes of action: breach of duty to act with reasonable care; breach of the suitability rule; breach of the Consumer Protection Act; breach of fiduciary responsibilities; negligence; and breach of contract. The causes of action related to Claimant's allegation that Respondent purchased unsuitable stocks for her account without authorization. Claimant alleged the stocks purchased were high risk technology stocks including Cache Flow, E. Phiphany, Lucent Technologies, Motorola, Silverstream Software, Sun Microsystems and Verisign.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant's claim failed to state a claim upon which relief may be granted; any recovery by Claimant is barred, in whole or in part, by the equitable doctrines of ratification, waiver, and estoppel; at all times Respondent reasonably followed and adhered to all compliance and supervisory procedures; and Claimant knowingly, willingly, and voluntarily assumed the risks of owning the securities in her account.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$75,000.00
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondent requested that the claims asserted against it be denied in their entirety, that it be awarded its costs and attorneys' fees, and granted such further relief as the Panel deems just and proper.

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

In its Order entered on June 20, 2006, the Panel ruled that Claimant's claims arising out of Claimant's purchase on February 3, 1999 of Motorola 6.68% bonds due 3/31/39 are dismissed as untimely under Rule 10304 of NASD Code of Arbitration Procedure. The Panel deferred ruling on the Motion to Dismiss Claimant's remaining claims pending the development of evidence at the hearing.

In its Order entered on October 20, 2006, the Panel denied Respondent's Motion for Leave to File a Counterclaim.

At the hearing, Claimant moved to amend the Statement of Claim to include estate beneficiaries, Clarissa Couch, Riccardo Couch, and Giancarlo Couch as Claimants. The Panel granted the Motion.

At the hearing, Respondent moved to dismiss the remaining claims based on the fact that the estate was closed before the claim was filed. The Panel denied the Motion.

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.

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Claimant's claims, each and all, are hereby denied and dismissed 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 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
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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 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 Panel has assessed forum fees for each hearing session conducted. 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:

One (1) Pre-hearing session with a single arbitrator x \$450.00 = \$ 450.00  
Pre-hearing conference: September 15, 2006 1 session

Three (3) Pre-hearing sessions with Panel x \$750.00 = \$ 2,250.00  
Pre-hearing conferences: April 21, 2006 1 session  
June 20, 2006 1 session  
October 20, 2006 1 session

Five (5) Hearing sessions x \$750.00 = \$ 3,750.00  
Hearing Dates: November 1, 2006 2 sessions  
November 2, 2006 2 sessions  
November 3, 2006 1 session

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Total Forum Fees = \$ 6,450.00

The Panel has assessed \$6,450.00 of the forum fees to Morgan Stanley DW, Inc.

### **FEE SUMMARY**

Claimant, Clarissa Couch, Executor of Estate of John Couch, is liable for:

Initial Filing Fee	= \$ 225.00
Total Fees	= \$ 225.00
Less payments	= \$ 975.00
Refund Due Claimant	= \$ 750.00

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

Member Fees	= \$ 3,550.00
Forum Fees	= \$ 6,450.00
Total Fees	= \$ 10,000.00
Less payments	= \$ 3,550.00
Balance Due NASD Dispute Resolution	= \$ 6,450.00

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

**ARBITRATION PANEL**

William H. Tobin, Esq. - Public Arbitrator, Presiding Chair  
Michael S. Matek, Esq. - Public Arbitrator  
Michael T. Gedzun - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

/s/ William H. Tobin, Esq.  
William H. Tobin, Esq.  
Public Arbitrator, Presiding Chair

November 7, 2006  
Signature Date

/s/ Michael S. Matek, Esq.  
Michael S. Matek, Esq.  
Public Arbitrator

November 9, 2006  
Signature Date

/s/ Michael T. Gedzun  
Michael T. Gedzun  
Non-Public Arbitrator

November 9, 2006  
Signature Date

November 10, 2006  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

William H. Tobin, Esq. - Public Arbitrator, Presiding Chair  
Michael S. Matek, Esq. - Public Arbitrator  
Michael T. Gedzun - Non-Public Arbitrator

Concurring Arbitrators' Signatures:



William H. Tobin, Esq.  
Public Arbitrator, Presiding Chair

11-07-2006  
Signature Date

Michael S. Matek, Esq.  
Public/Non-Public Arbitrator

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Signature Date

Michael T. Gedzun  
Non-Public Arbitrator

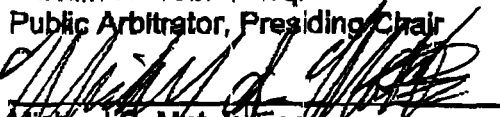
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Michael S. Matek, Esq.  
Public Arbitrator

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Signature Date  
11-9-06  
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Non-Public Arbitrator

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Public/Non-Public Arbitrator

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Signature Date

  
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Michael T. Gedzun  
Non-Public Arbitrator

11/09/2006  
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Signature Date

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Date of Service (For NASD office use only)