

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Karen S. Dyer, Claimant v. Morgan Stanley DW Inc., Respondent

Case Number: 06-01301

Hearing Site: Las Vegas, Nevada

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Nature of the Dispute: Customer v. Member

**REPRESENTATION OF PARTIES**

For Claimant:

Bruce D. Oakes, Esq.  
Simmons Cooper LLC  
East Alton, Illinois

For Respondent:

Aaron L. Danzer, Esq.  
Morgan Stanley DW Inc.  
Chicago, Illinois

**CASE INFORMATION**

Statement of Claim filed: March 14, 2006

Claimant's Uniform Submission Agreement signed: March 10, 2006

Statement of Answer filed by Respondent: June 16, 2006

Respondent's Uniform Submission Agreement signed: June 16, 2006

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty, breach of contract, violation of the Arizona Securities Act, violation of the Arizona Consumer Fraud Act, and negligence. Claimant's allegations involve Respondent's alleged improper asset allocation in the sub-accounts of Claimant's Morgan Stanley variable annuity.

Unless specifically admitted in its Answer, Respondent denied the allegations of wrongdoing set forth in Claimant's Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested \$122,385.00 in compensatory damages, pre-judgment interest, and costs, including attorney's fees pursuant to the Arizona Securities Act and Arizona Consumer Fraud Act.

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

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

On November 10, 2006, Respondent filed a Motion to Dismiss Claims Related to 1999 Annuity Purchase. On November 28, 2006, Claimant filed a Response to Respondent's Motion to Dismiss. On December 8, 2006, Respondent filed a Reply Brief in Support of Motion to Dismiss Claims Related to 1999 Annuity Purchase. On January 18, 2007, the Panel and the parties participated in a pre-hearing conference call during which the Panel heard oral argument from the parties regarding Respondent's motion. After due deliberation, the Panel granted Respondent's Motion to Dismiss Claims Related to 1999 Annuity Purchase. The Panel finds that it has the authority to hear Respondent's motion and to grant the relief sought therein. The Panel further finds that the occurrence or event giving rise to Claimant's claims was the initial purchase of the variable annuity product at issue in September 1999; therefore, pursuant to Rule 10304 of NASD's Code of Arbitration Procedure, Claimant's claims are no longer eligible for arbitration as Claimant did not file her claims within six years of that transaction. The Panel further finds that the Claimant knew or should have known of her claims no later than July 2001 and that the applicable state law statute of limitations on her claims is four years from that date. Thus, Claimant's claims are also time-barred by operation of the applicable statutes of limitation.

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, Respondent's Motion to Dismiss Claims Related to the 1999 Annuity Purchase 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) Any and all relief not specifically addressed herein 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	= \$ 300.00
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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 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), which lasts four (4) hours or less. The following forum fees are assessed:

Two (2) pre-hearing conference sessions with the Panel	
@ \$1,125.00/session	= \$2,250.00
Pre-hearing conferences: October 4, 2006	1 session
January 18, 2007	1 session
<b>Total Forum Fees</b>	<b>= \$2,250.00</b>

1. The Panel assessed \$1,125.00 of the forum fees to Claimant.
2. The Panel assessed \$1,125.00 of the forum fees to Respondent.

**Fee Summary**

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

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 1,125.00
Total Fees	= \$ 1,425.00
Less payments	= \$(1,425.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

2. Respondent is charged with the following fees and costs:

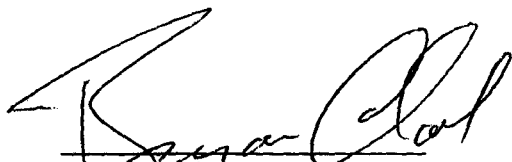
Member Fees	= \$ 5,200.00
Forum Fees	= \$ 1,125.00
Total Fees	= \$ 6,325.00
Less payments	= \$(5,200.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 1,125.00</b>

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**

<b>Bryan R. Clark</b>	-	<b>Public Arbitrator, Presiding Chair</b>
<b>David L. Moran</b>	-	<b>Public Arbitrator</b>
<b>Edwin M. Wilkerson</b>	-	<b>Non-Public Arbitrator</b>

**Concurring Arbitrators' Signatures**

  
Bryan R. Clark  
Chair, Public Arbitrator

1/25/07  
Signature Date

\_\_\_\_\_  
David L. Moran  
Public Arbitrator

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

\_\_\_\_\_  
Edwin M. Wilkerson  
Non-Public Arbitrator

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

1/25/07  
Date of Service

**ARBITRATION PANEL**

<b>Bryan R. Clark</b>	-	<b>Public Arbitrator, Presiding Chair</b>
<b>David L. Moran</b>	-	<b>Public Arbitrator</b>
<b>Edwin M. Wilkerson</b>	-	<b>Non-Public Arbitrator</b>

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Bryan R. Clark  
Chair, Public Arbitrator

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Signature Date



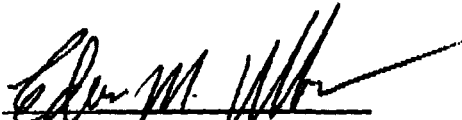
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David L. Moran  
Public Arbitrator

*January 24, 2007*

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Signature Date



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Edwin M. Wilkerson  
Non-Public Arbitrator

*1-24-07*

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Signature Date

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Date of Service