

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

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In the Matter of the Arbitration Between:

Kathleen Chen, Claimant v. Morgan Stanley DW Inc., Henry Auwinger and Dennis Peterson, Respondents

Morgan Stanley DW Inc., Henry Auwinger and Dennis Peterson, Third-Party Claimants  
v. Kumar Singh, Third-Party Respondent

Case Number: 97-01738

Hearing Site: San Francisco, California

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Nature of the Disputes: Customer v. Member and Associated Persons  
Member and Associated Persons v. Customer

**REPRESENTATION OF PARTIES**

For Claimant: Timothy A. Canning, Esq.  
Attorney at Law  
Novato, California

For Respondents / Third-Party Claimants  
Dean Witter Reynolds Inc., also known as  
Morgan Stanley DW Inc. ("MSDW"),  
Henry Auwinger ("Auwinger"),  
and Dennis Peterson ("Peterson"): Anthony L. Valenzuela, VP  
Morgan Stanley Law Division  
San Francisco, California

For Third-Party Respondent Kumar Singh ("Singh"): Kumar Singh  
San Leandro, California

**CASE INFORMATION**

Statement of Claim dated: December 31, 1997

Claimant's Uniform Submission Agreement signed: August 1, 2005

Joint Statement of Answer filed by Respondents MSDW, Auwinger and Peterson:  
February 2, 1998

Third-Party Claim filed by Respondents MSDW, Auwinger and Peterson for Indemnity  
and/or Contribution against Kumar Singh: February 2, 1998

Respondent MSDW's Uniform Submission Agreement signed: February 10, 1998

Respondent Auwinger's Uniform Submission Agreement signed: February 6, 1998

Respondent Peterson's Uniform Submission Agreement signed: February 9, 1998

### **CASE SUMMARY**

Claimant alleged breach of fiduciary duty, fraud and conspiracy, intentional misrepresentation, negligent misrepresentation, general negligence, intentional infliction of emotional distress, negligent infliction of emotional distress, negligent supervision, and civil conspiracy. Claimant's allegations involved various unspecified securities.

Respondents denied the allegations of wrongdoing set forth in Claimant's Statement of Claim and asserted various affirmative defenses.

In their Third-Party Claim, Respondents alleged that Third-Party Respondent Singh is legally obligated to indemnify Respondents for any liability imposed upon them for Claimant's investment losses. Respondents also alleged that they are entitled to contribution from Singh based on his comparative fault.

### **RELIEF REQUESTED**

Claimant's Statement of Claim requested special damages in the amount of \$75,000.00 for lost investments, or such greater amount as may be shown at arbitration, damages for emotional distress and anguish intentionally inflicted, general damages according to proof, punitive damages, reasonable attorneys' fees, prejudgment interest on all proven special damages, costs, and such other relief as the Panel may deem just and proper.

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

In their Third-Party Claim, Respondents MSDW, Auwinger and Peterson requested an order joining Kumar Singh as a third-party respondent in this proceeding and requiring him to file an Answer to the Statement of Claim, an award requiring Singh to indemnify Respondents MSDW, Auwinger and Peterson, in whole or in part, for any liability imposed upon them for losses arising from the loan transactions between Claimant Chen and Singh, an award requiring Singh to indemnify Respondents MSDW, Auwinger and Peterson, in whole or in part, for any liability imposed upon them for investment losses in Claimant Chen and Singh's joint account, and such other and further relief as the Panel may deem appropriate.

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

On or about August 1, 2006, in response to the Panel's Order of July 27, 2006, Claimant dismissed Respondent Dennis Peterson as a party in this matter.

Third-Party Respondent Singh did not file with NASD Dispute Resolution a Statement of Answer or properly executed submission to arbitration. Upon review of the file and the representations made on behalf of the Third-Party Claimants, the undersigned Panel determined that Third-Party Respondent Singh has been properly served with the Third-Party Claim and received due notice of the hearing, and that arbitration of the matter would proceed without Third-Party Respondent Singh present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

During the hearing, the Panel considered the positions of the parties relative to Respondents MSDW and Auwinger's Motion to Dismiss. The Panel denied the Motion.

The parties, present at hearing, 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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. All claims by Claimant, including the claims for punitive damages, are denied.
2. All claims with respect to the Third-Party Claim by Respondents MSDW, Auwinger and Peterson are denied.
3. The parties shall bear their respective costs, including attorney's fees.
4. 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	= \$ 150.00
Third-Party Claim filing fee	= \$ 500.00

**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 MSDW is a party and the following fees are assessed:

Member Surcharge = \$300.00

**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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

(1) Pre-hearing conference session with a single arbitrator  
@ \$300.00/session = \$300.00  
Pre-hearing conference: November 28, 2006 1 session

(7) Pre-hearing conference sessions with the Panel  
@ \$600.00/session = \$4,200.00  
Pre-hearing conferences: June 4, 2002 1 session  
June 20, 2002 1 session  
July 26, 2005 1 session  
August 16, 2005 1 session  
October 7, 2005 1 session  
October 19, 2005 1 session  
May 15, 2006 1 session

(7) Hearing sessions @ \$600.00/session = \$4,200.00  
Hearing Dates: January 16, 2007 2 sessions  
January 17, 2007 3 sessions  
January 18, 2007 2 sessions

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**Total Forum Fees = \$8,700.00**

1. The Panel assessed \$2,550.00 of the forum fees to Claimant Kathleen Chen.
2. The Panel assessed \$2,550.00 of the forum fees to Respondent MSDW.
3. NASD Dispute Resolution waived \$3,600.00 of the forum fees.

**Fee Summary**

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

Initial Filing Fee	= \$ 150.00
Forum Fees	= \$ 2,550.00
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Total Fees	= \$ 2,700.00
Less Payments	= \$( 650.00)
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<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 2,050.00</b>
  
2. Respondent MSDW is charged with the following fees and costs:

Member Fees	= \$ 300.00
Forum Fees	= \$ 2,550.00
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Total Fees	= \$ 2,850.00
Less Payments	= \$(2,000.00)
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<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 850.00</b>
  
3. Respondents MSDW, Auwinger and Peterson are charged jointly and severally with the following fees and costs:


Third-Party Claim Filing Fee	= \$ 500.00
Less Payments by MSDW	= \$( 500.00)
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<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</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**

Ralph A. Cotton, CPA	-	Public Arbitrator, Presiding Chair
James N. D'Orso	-	Public Arbitrator
William A. Husa	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Ralph A. Cotton, CPA  
Chair, Public Arbitrator

1-29-07  
Signature Date

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James N. D'Orso  
Public Arbitrator

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

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William A. Husa  
Non-Public Arbitrator

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

1/31/07  
Date of Service

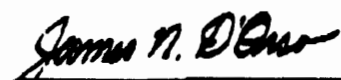
**ARBITRATION PANEL**

Ralph A. Cotton, CPA	-	Public Arbitrator, Presiding Chair
James N. D'Orso	-	Public Arbitrator
William A. Husa	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Ralph A. Cotton, CPA  
Chair, Public Arbitrator

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

  
\_\_\_\_\_  
James N. D'Orso  
Public Arbitrator

01-30-2007  
Signature Date

\_\_\_\_\_  
William A. Husa  
Non-Public Arbitrator

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

1/31/07  
Date of Service

**ARBITRATION PANEL**

Ralph A. Cotton, CPA	-	Public Arbitrator, Presiding Chair
James N. D'Orso	-	Public Arbitrator
William A. Husa	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Ralph A. Cotton, CPA  
Chair, Public Arbitrator

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Signature Date

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James N. D'Orso  
Public Arbitrator

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Signature Date

*William A. Husa*  
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William A. Husa  
Non-Public Arbitrator

*01-30-2007*  
\_\_\_\_\_  
Signature Date

*11/31/07*  
\_\_\_\_\_  
Date of Service



Third-Party Claim filed by Respondents Auwinger, Petersen, and MSDW: February 2, 1998

Respondent Auwinger's Uniform Submission Agreement signed: February 6, 1998

Respondent Petersen's Uniform Submission Agreement signed: February 9, 1998

Respondent MSDW's Uniform Submission Agreement signed: February 10, 1998

### **CASE SUMMARY**

Claimant alleged breach of fiduciary duty, fraud and conspiracy, intentional misrepresentation, negligent misrepresentation, general negligence, intentional infliction of emotional distress, negligent infliction of emotional distress, negligent supervision, and civil conspiracy. Claimant's allegations involved various unspecified securities.

Respondents Auwinger, Petersen, and MSDW denied the allegations of wrongdoing set forth in Claimant's Statement of Claim and asserted various affirmative defenses.

Respondent Oberholzer did not enter an appearance in this matter.

In their Third-Party Claim, Respondents Auwinger, Petersen, and MSDW alleged that Third-Party Respondent Singh contributed to Claimant's losses.

Third-Party Respondent Singh did not enter an appearance in this matter.

### **RELIEF REQUESTED**

Claimant requested approximately \$75,000.00 in compensatory damages, unspecified punitive damages, pre-judgment interest and costs, including attorney's fees.

Respondents Auwinger, Petersen, and MSDW requested dismissal of Claimant's Statement of Claim in its entirety.

In their Third-Party Claim, Respondents Auwinger, Petersen, and MSDW requested that Third-Party Respondent Singh indemnify Respondents Auwinger, Petersen, and MSDW, in whole or in part, for any liability imposed upon Respondents relating to losses arising from the loan transactions between Claimant and Third-Party Respondent Singh and relating to investment losses in Claimant and Third-Party Respondent Singh's joint account at MSDW.

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

Respondent Oberholtzer and Third-Party Respondent Singh did not file with the NASD Dispute Resolution properly executed submission agreements but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure ("Code") and are bound by the determination of the Panel on all issues submitted.

Respondent Oberholzer filed a Bankruptcy Petition with the United States Bankruptcy Court prior to Claimant filing this arbitration claim. Accordingly, this matter was stayed as to Respondent Oberholzer. On October 12, 2005, Claimant requested that Respondent Oberholzer be dismissed from this matter. On October 19, 2005, after due deliberation in executive session, the Panel granted Claimant's request.

During the June 20, 2002, conference call, Respondents Auwinger, Petersen, and MSDW requested Default Judgment on their Third-Party Claim. Upon review of the file and the representations made on behalf of the Third-Party Claimants, the undersigned Panel determined that Third-Party Claimants applied due diligence in their attempt to serve their Third-Party Claim on Third-Party Respondent Singh and that arbitration of the matter would proceed without said Third-Party Respondent present. The Panel granted Respondents Auwinger, Petersen, and MSDW's request and entered a Default Judgment on August 31, 2005, for indemnification against Third-Party Respondent Kumar Singh.

On September 16, 2005, Respondent Petersen filed a Motion to Dismiss, which also included a request for expungement of this matter from Respondent Petersen's registration records maintained by the NASD Central Registration Depository ("CRD"). Claimant did not submit an opposition to this motion. Oppositions were due September 26, 2005. On October 7, 2005, the Panel held a pre-hearing conference call with the parties on this motion. Although receiving proper notice of the pre-hearing conference, Claimant did not appear at this conference call. After due deliberation in executive session, the Panel granted the motion and recommended expungement of all references to this matter from Respondent Petersen's CRD records.

On September 30, 2005, Respondents Auwinger, Petersen, and MSDW filed a Motion to Dismiss for Claimant's Failure to Comply with Discovery Order. On October 13, 2005, Claimant filed an opposition. On October 19, 2005, the Panel held a pre-hearing conference call with the parties on this motion. After due deliberation in executive session, the Panel granted the motion.

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 and oral argument presented at the pre-hearing conferences, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimant's claims against Respondents Auwinger, Petersen, and MSDW are dismissed with prejudice.

As a result of this ruling, the Default Judgment previously entered on the Third-Party Claim filed by Respondents Auwinger, Petersen, and MSDW against Third-Party Respondent Singh for indemnification is deemed moot by the Panel.

- 2) Claimant's claims against Respondent Oberholzer are dismissed without prejudice.
- 3) The Panel recommends the expungement of all references to the above-captioned arbitration from Respondent Dennis Petersen's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Dennis Petersen must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 4) The parties shall bear their respective costs, including attorney's fees.
- 5) 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	= \$ 150.00
Respondents Auwinger, Petersen, and MSDW Third-Party Claim Fee	= \$ 500.00

**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 MSDW is a party and the following fees are assessed:

Member Surcharge	= \$ 300.00
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**Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

(6) Pre-hearing conference sessions with the Panel @ \$600.00/session	= \$3,600.00
Pre-hearing conferences:	
June 4, 2002	1 session
June 20, 2002	1 session
July 26, 2005	1 session
August 16, 2005	1 session
October 7, 2005	1 session
October 19, 2005	1 session

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**Total Forum Fees** **= \$3,600.00**

1. The Panel assessed \$2,400.00 of the forum fees to Claimant.
2. The Panel assessed \$1,200.00 of the forum fees jointly and severally to Respondents Auwinger and MSDW.

**Fee Summary**

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

Initial Filing Fee	= \$ 150.00
<u>Forum Fees</u>	<u>= \$ 2,400.00</u>
Total Fees	= \$ 2,550.00
<u>Less payments</u>	<u>= \$ (650.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 1,900.00</b>
  
2. Respondent MSDW is charged with the following fees and costs:

Member Fees	= \$ 300.00
<u>Less payments</u>	<u>= \$ (300.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>
  
3. Respondents Auwinger, Petersen, and MSDW are charged jointly and severally with the following fees and costs:

Third-Party Claim Filing Fee	= \$ 500.00
<u>Less payments</u>	<u>= \$ (500.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>
  
4. Respondents Auwinger and MSDW are charged jointly and severally with the following fees and costs:

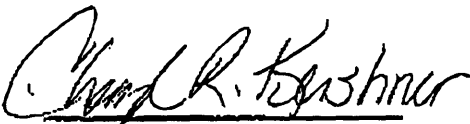
Forum Fees	= \$ 1,200.00
<u>Less payments by MSDW</u>	<u>= \$ (650.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 550.00</b>

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**

Cheryl R. Kershner	-	Public Arbitrator, Presiding Chair
Jonathan Holman Hathaway	-	Public Arbitrator
Bradley C. Mitchell	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



Cheryl R. Kershner  
Chair, Public Arbitrator

10/24/05  
Signature Date

Jonathan Holman Hathaway  
Public Arbitrator

Signature Date

Bradley C. Mitchell  
Non-Public Arbitrator

Signature Date

10/25/05  
Date of Service

**ARBITRATION PANEL**

Cheryl R. Kershner	-	Public Arbitrator, Presiding Chair
Jonathan Holman Hathaway	-	Public Arbitrator
Bradley C. Mitchell	-	Non-Public Arbitrator

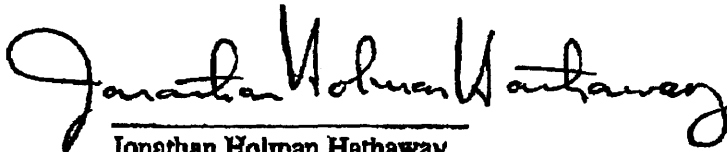
**Concurring Arbitrators' Signatures**

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Cheryl R. Kershner  
Chair, Public Arbitrator

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Signature Date



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Jonathan Holman Hathaway  
Public Arbitrator

10.24.2005

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Signature Date

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Bradley C. Mitchell  
Non-Public Arbitrator

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Signature Date

10/25/05

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Date of Service

**ARBITRATION PANEL**

Cheryl R. Kershner	-	Public Arbitrator, Presiding Chair
Jonathan Holman Hathaway	-	Public Arbitrator
Bradley C. Mitchell	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Cheryl R. Kershner  
Chair, Public Arbitrator

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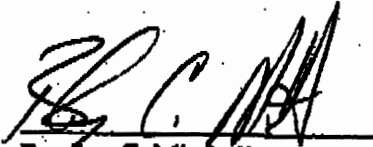
Signature Date

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Jonathan Holman Hathaway  
Public Arbitrator

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Signature Date



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Bradley C. Mitchell  
Non-Public Arbitrator

10/25/05  
Signature Date

10/25/05  
Date of Service