

SECURITIES ARBITRATION COMMENTATOR
June 16, 2004

SECURITIES ARBITRATION ALERT 2004-24 (6/16/04)

DOUGLAS TRUST v. MORGAN STANLEY DW, INC., NYSE ID #2003-011292 (San Diego, 5/21/04). Arbitration Panel restores principal of trust with \$750,000 award, despite market conditions and cash withdrawals that limited flexibility and ability to avoid losses. The "Award Summary" section of this Award hits the major aspects of the investor's complaint, alleging "over-concentration in telecommunication stocks, unsuitable investments and use of margin," but the pleadings in the case fill in the details of a not unfamiliar situation facing today's nuclear family. Here, a parent, with wealth accumulated by the success of long-term securities holdings, is forced by diminished mental capacity and health problems to turn over control of the wealth to her daughter and obtain full-time care. Besides the role reversal, the tensions and adjustments that these situations demand, the financial demands and planning needs grow complex. Often, as in this case, a concentrated portfolio offers two apparent options: liquidate, pay huge capital gains and diversify or stay the course, await death and achieve a stepped-up basis. In this case, the mother set up a revocable trust which reached a pinnacle value of about \$2.2 million, represented in great part by a long-term position in AT&T (and, after the breakup, its many component stocks). The daughter-trustee, in her mid-50s with four children, claimed lack of sophistication and argued that her MSDW broker failed to make recommendations to diversify the concentrated telecommunications holdings. To achieve liquidity if not diversification, the broker purportedly advised a large margin loan when she (via the Trust) purchased a house for her family and the mother. Thereafter, she charged, the increasing margin debt and health care expenses could not be met with the income supplied by the account and the broker began making unsuitable purchases and sales to avoid or deal with margin calls. The broker is not named as a Respondent, but Morgan Stanley denies, in its Answer, that the broker made the "signature loan" recommendation, alleging, instead, that "Claimant contacted her broker and expressly asked to borrow against the equity in the account by taking out margin loans." The Answer also emphasizes the gifting practices and spending in which the trustee engaged and points to the account's debit card and checking activity to suggest the personal nature of certain spending. Respondent maintains that its recommendations were suitable and often did better in a declining market between 1999 and 2002 than did the stocks that were sold. Nevertheless, general market conditions, Claimant's decision to hold much of the AT&T-related positions, together with the constant withdrawals, thwarted prudent shepherding of the account's assets. After about four years and a borrowing which totaled about \$1.3 million, the Trust account was reduced to a \$34,000 balance. Claimant alleged the \$715,000 in lost principal was "squandered and depleted by Morgan and its brokers," and sought punitive damages, attorney fees, "lost opportunity profits" (in the form of interest), and damages under the California Elder Abuse Statute. The Arbitrators grant a lump-sum award of \$750,000, which appears (we speculate) to represent the difference between the \$2.2 million in value and the \$1.3 million in value (without the margin debt), plus some allowance for interest. **(ed: Claimant's counsel, Erwin J. Shustak, Shustak Jalil & Heller, P.C., San Diego, CA, confirms this in a Press Release regarding the Award, stating that "[t]he amount of the award is the amount of losses the account sustained, as acknowledged by Morgan Stanley's own expert."** (SAC Ref. No. 04-24-04).