

Award  
NASD Dispute Resolution

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In the Matter of the Arbitration Between:

Name of the Claimant  
Richard Sumney, IRA

Case Number: 02-05748

Names of the Respondents  
Gerald Goodman  
Morgan Stanley DW, Inc.  
f/k/a Dean Witter Reynolds, Inc.

Hearing Site: Pittsburgh, PA

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**REPRESENTATION OF PARTIES**

Claimant, Richard Sumney, IRA, hereinafter referred to as "Claimant", was represented by Stanley W. Greenfield, Esq., Greenfield & Kay, Pittsburgh, Pennsylvania.

Respondents, Gerald Goodman ("Goodman") and Morgan Stanley DW, Inc. f/k/a/ Dean Witter Reynolds, Inc. ("Morgan Stanley"), hereinafter collectively referred to as "Respondents", were represented by Michael A. Gross, Esq., Ulmer & Berne, LLP, Cleveland, Ohio.

**CASE INFORMATION**

Statement of Claim filed on September 27, 2002.

Claimant signed the Uniform Submission Agreement on September 26, 2002.

Motion to Dismiss and Statement of Answer filed by Respondents on January 14, 2003.

Respondents did not file Uniform Submission Agreements.

Claimant filed a response to Respondents' Motion to Dismiss on August 19, 2003.

Respondents filed a Motion to Strike and Reply to Claimant's Response to Respondents' Motion to Dismiss on August 21, 2003.

**CASE SUMMARY**

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Claimant asserted the following causes of action, among others: breach of contract; negligence; breach of fiduciary duty; churning; misrepresentation; omission of fact; suitability; failure to supervise; and, unauthorized trading. The causes of action relate to the purchase and sale of various stocks.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: failure to state a claim upon which relief may be granted; failure to mitigate damages; Claimant's claims are barred by the doctrine of accord and satisfaction; ratification; failure to plead claims with the requisite degree of particularity; and, Claimant's claims are barred by the doctrines of estoppel, waiver, laches and the statute of limitations.

### **RELIEF REQUESTED**

Claimants requested:

Compensatory Damages	\$ 29,603.29
Punitive Damages	\$ 29,603.29
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondents requested that the Statement of Claim be dismissed in its entirety; that they be awarded costs, attorney's fees, forum fees; and, that the Arbitration Panel (the "Panel") recommend the expungement of all reference to this matter from Respondent Goodman's Central Registration Depository ("CRD") record.

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

Respondents did not file with NASD Dispute Resolution a properly executed submission to arbitration but are required to submit to arbitration pursuant to the Code and, having answered the claim, are bound by the determination of the Panel on all issues submitted.

On April 23, 2001 Respondent Goodman filed a Voluntary Petition in the United States Bankruptcy Court, Southern District of Ohio, Eastern Division. Pursuant to this filing, all matters concerning this party are indefinitely stayed.

The Panel denied Respondent Morgan Stanley's Motion to Strike on September 16, 2003.

The Panel granted Respondent Morgan Stanley's Motion to Dismiss on September 16, 2003.

### **AWARD**

After considering the pleadings, motions and responses thereto, and hearing oral argument, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are denied in their entirety;

2. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and,
3. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain or collect the non-refundable filing fees 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 event giving rise to the dispute. Accordingly, Respondent Morgan Stanley is a party.

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 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. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel @ \$ 750.00	= \$1,500.00
Pre-hearing conferences: July 30, 2003	1 session
September 15, 2003	1 session
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Total Forum Fees	= \$1,500.00

1. The Panel has assessed \$ 750.00 of the forum fees to Claimant.
2. The Panel has assessed \$ 750.00 of the forum fees to Respondent Morgan Stanley.

### **Fee Summary**

1. Claimant is assessed and shall pay:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$ 750.00

Total Fees	= \$ 975.00
Less payments	= \$ 975.00
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Respondent Morgan Stanley is assessed and shall pay:

Member Fees	= \$ 3,550.00
Forum Fees	= \$ 750.00
Total Fees	= \$ 4,300.00
Less payments	= \$ 3,550.00
Balance Due NASD Dispute Resolution	= \$ 750.00

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

ARBITRATION PANEL

Edward A. Grupp, Esq.	-	Public Arbitrator, Presiding Chairperson
William Lerner, Esq.	-	Public Arbitrator, Panelist
Garry Lee Hogan	-	Non-Public Arbitrator, Panelist

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NASD DISPUTE RESOLUTION

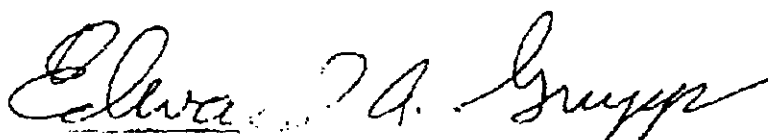
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Concurring Arbitrators' Signatures



Edward A. Grupp Esq.  
Public Arbitrator Presiding Chairperson

Oct. 10, 2003

Signature Date

William Lerner  
Public Arbitrator Panelist

Signature Date

Gary Lee Hogan  
Non-Public Arbitrator Panelist

Signature Date

October 13, 2003

Date of Service (NASD Dispute Resolution office use only)

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**Concurring Arbitrators' Signatures**

Edward A. Grupp, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

William Lerner  
William Lerner, Esq.  
Public Arbitrator, Panelist

October 10, 2003  
Signature Date

Gary Lee Hogan  
Non-Public Arbitrator, Panelist

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