

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant  
Roy Leichty, IRA

Case Number: 02-05874

Names of the Respondents  
Gerald Goodman  
Morgan Stanley DW, Inc.  
f/k/a Dean Witter Reynolds, Inc.  
First Union Securities, Inc.  
f/k/a Kemper/Everen Securities, Inc.  
n/k/a Wachovia Securities, Inc.

Hearing Site: Pittsburgh, PA

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**REPRESENTATION OF PARTIES**

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

Respondents, Gerald Goodman ("Goodman"), Morgan Stanley DW, Inc., f/k/a Dean Witter Reynolds, Inc., ("Morgan Stanley") and First Union Securities, Inc. f/k/a Kemper/Everen Securities, Inc., n/k/a Wachovia Securities, Inc. ("First Union"), 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 26, 2002.

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

Statement of Answer and Motion to Dismiss filed by First Union and Goodman on December 3, 2002.

Amended Motion to Dismiss and Statement of Answer filed by First Union and Goodman on January 8, 2003.

Statement of Answer and Motion to Dismiss filed by Morgan Stanley and Goodman on January 14, 2003.

Respondents did not file Uniform Submission Agreements.

Claimant filed a response to Respondents' Motion to Dismiss and Amended Motion to Dismiss on July 30, 2003.

Morgan Stanley and First Union filed a Reply to Claimant's Response to Its Motion to Dismiss on August 7, 2003.

Morgan Stanley and First Union filed a Motion to Strike on August 7, 2003.

### **CASE SUMMARY**

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

Unless specifically admitted in their Answer, Morgan Stanley and Goodman denied the allegations set forth in the Statement of Claim and asserted the following defenses: failure to state a claim upon which relief may be granted; assumption of the risk; contributory negligence; failure to mitigate damages; Claimant's claims are barred by the statute of limitations; ratification; failure to plead fraud claims with requisite degree of particularity; Claimant's claims are barred by the doctrines of estoppel, waiver and laches; and, Claimant's claims are barred by the doctrines of accord and satisfaction.

Unless specifically admitted in their Answer, First Union and Goodman denied the allegations set forth in the Statement of Claim and asserted the following defenses: failure to state a claim upon which relief may be granted; failure to mitigate damages; assumption of the risk; contributory negligence; Claimant's claims are barred by the doctrines of estoppel, waiver, and laches; Claimant's claims are barred by the statute of limitations; ratification; failure to plead fraud claims with the requisite degree of particularity; and, Claimant's claims are barred by the doctrine of accord and satisfaction.

### **RELIEF REQUESTED**

Claimant requested:

Compensatory Damages	\$ 52,292.92
Punitive Damages	\$ 52,292.92
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, attorneys' fees, and forum fees; and, that 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 Arbitration Panel (the "Panel") on all issues submitted.

On April 23, 2001 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 granted Respondents' Motion to Dismiss and therefore the Motion to Strike was moot.

### **AWARD**

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

1. Claimant's claims are dismissed 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	= \$ 300.00
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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 firms that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Morgan Stanley and First Union are parties.

<u>Morgan Stanley:</u>	
Member surcharge	= \$ 1,100.00
Pre-hearing process fee	= \$ 750.00

Hearing process fee = \$ 1,700.00

First Union:

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 @ \$1,125.00 = \$ 2,250.00

Pre-hearing conferences: July 21, 2003 1 session

August 22, 2003 1 session

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Total Forum Fees = \$2,250.00

1. The Panel has assessed \$1,125.00 of the forum fees to Claimant.
2. The Panel has assessed \$1,125.00 of the forum fees jointly and severally to Morgan Stanley and First Union.

**Fee Summary**

1. Claimant is assessed and shall pay:

Initial Filing Fee = \$ 300.00

Forum Fees = \$1,125.00

Total Fees = \$1,425.00

Less payments = \$1,425.00

Balance Due NASD Dispute Resolution = \$ 0.00

2. Respondent Morgan Stanley is assessed and shall pay:

Member Fees = \$ 3,550.00

Total Fees = \$ 3,550.00

Less payments = \$ 4,600.00

Refund owed Morgan Stanley = \$ 1,050.00

3. Respondent First Union is assessed and shall pay:

Member Fees = \$ 3,550.00

Total Fees = \$ 3,550.00

Less payments = \$ 6,225.00

Refund owed First Union = \$ 2,675.00

4. Respondent Morgan Stanley and Respondent First Union are jointly and severally assessed and shall pay:

Forum Fees	= \$ 1,125.00
Total Fees	= \$ 1,125.00
Less payments	= \$ 1,125.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

**ARBITRATION PANEL**

Merwyn R. Markel	-	Public Arbitrator, Presiding Chairperson
Andrew L. Weil, Esq.	-	Public Arbitrator, Panelist
Paul H. McKenna	-	Non-Public Arbitrator, Panelist

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**Concurring Arbitrators' Signatures**

*Merwyn R. Markel*

Merwyn R. Markel

Public Arbitrator, Presiding Chairperson

*October 17, 2003*

Signature Date

Andrew L. Weil, Esq.

Public Arbitrator, Panelist

Signature Date

Paul H. McKenna

Non-Public Arbitrator, Panelist

Signature Date

*October 20, 2003*

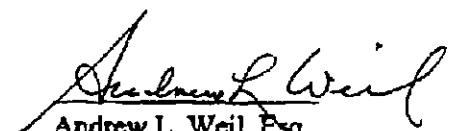
Date of Service (For NASD Dispute Resolution office use only)

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**Concurring Arbitrators' Signatures**

Merwyn R. Markel  
Public Arbitrator, Presiding Chairperson

Signature Date

  
Andrew L. Weil, Esq.  
Public Arbitrator, Panelist

10/17/2003  
Signature Date

Paul H. McKenna  
Non-Public Arbitrator, Panelist

Signature Date

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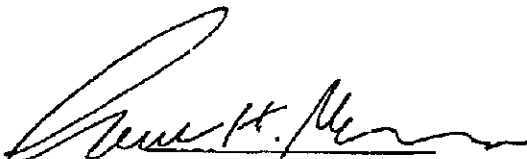
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Merwyn R. Markel  
Public Arbitrator, Presiding Chairperson

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Signature Date

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Andrew L. Weil, Esq.  
Public Arbitrator, Panelist

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



Paul H. McKenna  
Non-Public Arbitrator, Panelist

10/20/03  
Signature Date

October 20, 2003  
Date of Service (For NASD Dispute Resolution office use only)