

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

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In the Matter of the Arbitration Between:

Name of the Claimant  
James Dellorso, IRA

Case Number: 02-05876

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

Hearing Site: Pittsburgh, PA

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**REPRESENTATION OF PARTIES**

Claimant, James Dellorso, 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. 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.

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

Motion to Dismiss and Statement of Answer 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.

Respondents did not file Uniform Submission Agreements.

Claimant filed a Response to Respondents' Motion to Dismiss on August 25, 2003.

Respondents filed a Motion to Strike and Reply to Claimant's Response to its Motion to Dismiss on August 27, 2003.

### **CASE SUMMARY**

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

Unless specifically admitted in their Answer, First Union and Goodman denied the allegations made 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; Claimant's claims are barred by the doctrines of estoppel, waiver and laches; Claimant's claims are barred by the statute of limitations; ratification; and, Claimant's claims are barred by the doctrine of accord and satisfaction.

Unless specifically admitted in their Answer, Morgan Stanley and Goodman denied the allegations made in the Statement of Claim and asserted the following defenses: failure to mitigate damages; Claimant's claims are barred by the doctrine of accord and satisfaction; Claimant's claims are barred by the doctrines of estoppel, waiver and laches; failure to plead fraud claims with requisite degree of particularity; and, contributory negligence.

### **RELIEF REQUESTED**

Claimant requested:

|                       |                    |
|-----------------------|--------------------|
| Compensatory Damages  | \$ 61,999.82       |
| Punitive Damages      | \$ 61,999.82       |
| Interest              | amount unspecified |
| Attorneys' Fees       | amount unspecified |
| Other Costs           | amount unspecified |
| Other Monetary Relief | 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 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 properly executed submissions 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 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 Respondents Motion to Strike on September 30, 2003.

The Panel granted Respondents Motion to Dismiss on September 30, 2003.

### **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 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 = \$ 300.00

#### **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.

##### **Morgan Stanley:**

|                         |               |
|-------------------------|---------------|
| Member surcharge        | = \$ 1,700.00 |
| Pre-hearing process fee | = \$ 750.00   |
| Hearing process fee     | = \$ 2,750.00 |

##### **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: August 7, 2003 1 session    |                     |
| September 22, 2003 1 session                         |                     |
| <hr/> Total Forum Fees                               | <hr/> = \$ 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. Morgan Stanley is assessed and shall pay:

|                                     |               |
|-------------------------------------|---------------|
| Member Fees                         | = \$ 5,200.00 |
| Total Fees                          | = \$ 5,200.00 |
| Less payments                       | = \$ 2,450.00 |
| Balance Due NASD Dispute Resolution | = \$ 2,750.00 |

3. First Union is assessed and shall pay:

|                         |               |
|-------------------------|---------------|
| Member Fees             | = \$ 3,550.00 |
| Total Fees              | = \$ 3,550.00 |
| Less payments           | = \$ 5,475.00 |
| Refund owed First Union | = \$ 1,925.00 |

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

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

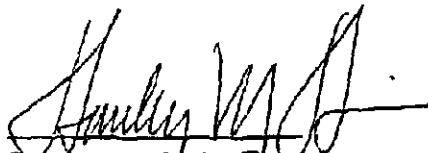
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

|                        |   |  |
|------------------------|---|--|
| Stanley M. Stein, Esq. | - | Public Arbitrator, Presiding Chairperson |
| Gerhard W. Elm         | - | Public Arbitrator, Panelist              |
| Jay W. Lewis, Esq.     | - | Non-Public Arbitrator, Panelist          |

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Arbitration No. 02-05876  
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**Concurring Arbitrators' Signatures**



Stanley M. Stein, Esq.  
Public Arbitrator, Presiding Chairperson

10/14/03  
Signature Date

Gerhard W. Elm  
Public Arbitrator, Panelist

Signature Date

Jay W. Lewis, Esq.  
Non-Public Arbitrator, Panelist

Signature Date

October 21, 2003  
Date of Service (For NASD Dispute Resolution office use only)

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Public Arbitrator, Presiding Chairperson

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Signature Date

  
\_\_\_\_\_  
Gerhard W. Elm  
Public Arbitrator, Panelist

\_\_\_\_\_  
10-15-03  
Signature Date

\_\_\_\_\_  
Jay W. Lewis, Esq.  
Non-Public Arbitrator, Panelist

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Stanley M. Stein, Esq.  
Public Arbitrator, Presiding Chairperson

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Signature Date

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Gerhard W. Elm  
Public Arbitrator, Panelist

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



Jay W. Lewis, Esq.  
Non-Public Arbitrator, Panelist

10/14/03

Signature Date

October 21, 2003  
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