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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Seymour Eisen

Case Number: 02-07014

Names of the Respondents  
Morgan Stanley DW, Inc.  
Robert Wasserman

Hearing Site: Boca Raton, Florida

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Nature of the Dispute: Customer v. Member and Associated Person.

**REPRESENTATION OF PARTIES**

For Seymour Eisen ("Eisen"), hereinafter referred to as "Claimant": Philip J. Feldman, Esq., Feldman & Getz, LLP, North Miami Beach, Florida.

For Morgan Stanley DW, Inc. ("MSDW") and Robert Wasserman ("Wasserman"), hereinafter referred to as "Respondents": Angelika Hunnefeld, Esq., Greenberg Traurig, P.A., Miami, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: November 20, 2002.

Claimant signed the Uniform Submission Agreement: December 9, 2002.

Statement of Answer filed by Respondents on or about: February 20, 2003.

Respondent MSDW signed the Uniform Submission Agreement: February 17, 2003.

Respondent Wasserman did not file an executed Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: violation of the Florida Statutes (specifically Chapter 517); breach of contract; negligence; breach of fiduciary duty; unsuitability; omission of facts; and, respondeat superior. The causes of action relate to the purchase and sale of various mutual funds, including but not limited to, MSDW American Opportunities; MSDW Growth Fund; MSDW Information Fund; MSDW Technology Fund; and, MSDW Total Return Trust in Claimant's account.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages of \$120,310.28, interest at the legal rate from the date of purchase or reasonable market return, reasonable attorneys' fees (to be determined by a court of competent jurisdiction), punitive damages, costs, and such other relief as is just and proper.

Respondents requested that all claims asserted by Claimant be denied in their entirety, and that they be awarded their costs and fees incurred in this matter. Respondents do not waive their right to a ruling by a court of competent jurisdiction on the issue of an award of fees and expenses, including reasonable attorneys' fees pursuant to Chapter 517 of the Florida Statutes. Respondent Wasserman further requested that the Panel enter an order directing the expungement of this matter from his NASD Central Registration Depository ("CRD") record.

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

Respondent Wasserman did not file with NASD Dispute Resolution ("NASD") a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, is bound by the determination of the Panel on all issues submitted.

On or about November 21, 2003, the parties advised the NASD that they had settled this matter.

On or about December 2, 2003, the parties advised the NASD of their intent to file a Stipulated Motion for Expungement by the Panel.

On or about March 10, 2004, the parties filed with NASD a Stipulated Motion for Award Directing Expungement.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Stipulated Award may be entered.

### **AWARD**

After considering the pleadings, and the Stipulated Motion for Award Directing Expungement, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

The Panel recommends the expungement of all references to the above captioned arbitration from Respondent Wasserman's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Wasserman must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

**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 firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, MSDW is a member firm name and party.

Member surcharge = \$1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$2,750.00

Total Member Fees = \$5,200.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were incurred in this matter.

**Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

No injunctive relief fees were incurred in this matter.

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$450.00/session = \$ 450.00

Pre-hearing conference: October 24, 2003 1 session

One (1) Pre-hearing session with the Panel @ \$1,125.00/session = \$1,125.00

Pre-hearing conference: May 13, 2003 1 session

Total Forum Fees = \$1,575.00

The Panel assessed forum fees of \$787.50 to Claimant.

The Panel assessed forum fees of \$787.50 to Respondents, jointly and severally.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred in this matter.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 787.50
Total Fees	= \$1,087.50
Less payments	= \$1,087.50
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent MSDW is solely liable for:

Member Fees	= \$5,200.00
Total Fees	= \$5,200.00
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

Forum Fees	= \$ 787.50
Total Fees	= \$ 787.50
Less payments	= \$ 787.50
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**

Donald J. Spero, Esq.	-	Public Arbitrator, Presiding Chairperson
Elizabeth L. Clark	-	Public Arbitrator
Burton Eckstein	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/  
Donald J. Spero, Esq.  
Public Arbitrator, Presiding Chairperson

04/06/04  
Signature Date

/s/  
Elizabeth L. Clark  
Public Arbitrator

04/05/04  
Signature Date

/s/  
Burton Eckstein  
Non-Public Arbitrator

04/05/04  
Signature Date

04/12/04  
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures



Donald J. Spero, Esq.  
Public Arbitrator, Presiding Chairperson

April 6, 2004  
Signature Date

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Elizabeth L. Clark  
Public Arbitrator

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

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Burton Eckstein  
Non-Public Arbitrator

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Signature Date

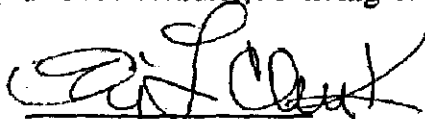
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NASD Dispute Resolution  
Arbitration No. 02-07014  
Award Page 5 of 5

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Public Arbitrator, Presiding Chairperson

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Signature Date

  
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Elizabeth L. Clark  
Public Arbitrator

  
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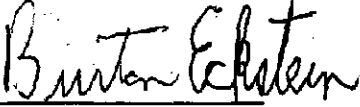
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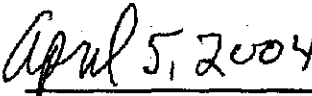
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Elizabeth L. Clark  
Public Arbitrator

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