

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

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In the Matter of the Arbitration Between:

Harold Gillet IRA and Harold Gillet (Claimants) v. Morgan Stanley Dean Witter, Inc.  
n/k/a Morgan Stanley DW Inc., Eric Brief and Patrick Passarelle (Respondents)

Case Number: 02-07606

Hearing Site: New York, New York

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Nature of the Dispute: Customers v. Member and Associated Persons.

**REPRESENTATION OF PARTIES**

Claimants Harold Gillet IRA ("Gillet IRA") and Harold Gillet ("Gillet") hereinafter collectively referred to as "Claimants": Christopher P. Edelson, Esq., Chao & Edelson, L.L.C, New York, NY.

Respondents Morgan Stanley Dean Witter, Inc. n/k/a Morgan Stanley DW Inc. ("MSDW"), Eric Brief ("Brief"), and Patrick Passarelle ("Passarelle"), hereinafter collectively referred to as "Respondents": Keith Guilfoyle, Esq., Morgan Stanley DW Inc., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: December 12, 2002.

Claimant Gillet signed the Uniform Submission Agreement: November 9, 2002.

Joint Statement of Answer filed by Respondents on or about: March 14, 2003.

Respondent MSDW signed the Uniform Submission Agreement: March 13, 2003.

Respondent Brief signed the Uniform Submission Agreement: March 24, 2003.

Respondent Passarelle signed the Uniform Submission Agreement: March 14, 2003.

**CASE SUMMARY**

Claimants asserted the following causes of action: unauthorized trading; fraud; negligent misrepresentation; and promissory estoppel. Claimants' claims involved shares of Viacom and JetBlue.

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 in the amount of \$50,000.00; punitive damages in the amount of \$50,000.00; reasonable attorneys' fees; and costs.

Respondents requested that all claims asserted in the Statement of Claim be denied in their entirety; and that the Panel order such other forms of relief to Respondents as it may deem appropriate.

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

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

### **AWARD**

After considering the pleadings, and the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims are denied in their entirety.
2. *Any and all relief not specifically addressed herein, including punitive damages, is denied.*
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondents Eric Brief and Patrick Passarelle'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, Respondents Brief and Passarelle must obtain confirmation from a court of competent jurisdiction before 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 = \$225.00

#### **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 persons at the time of the events giving

rise to the dispute. Accordingly, Morgan Stanley Dean Witter, Inc. n/k/a Morgan Stanley DW Inc. 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 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 Panel @ \$750.00	= \$ 750.00
Pre-hearing conference: July 15, 2003 1 session	
Three (3) Hearing sessions @ \$750.00 *	= \$2,250.00
Hearing Dates: May 18, 2004 2 sessions	
May 19, 2004 1 session	
Total Forum Fees	= \$3,000.00

1. The Panel has assessed \$1,500.00 of the forum fees, jointly and severally, against Claimants.
2. The Panel has assessed \$1,500.00 of the forum fees against Respondent MSDW.

**Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$1,500.00
Total Fees	= \$1,725.00
Less payments	= \$ 975.00
Balance Due NASD Dispute Resolution	= \$ 750.00

2. Respondent MSDW is solely liable for:

Member Fees	= \$3,550.00
Forum Fees	= \$1,500.00
Total Fees	= \$5,050.00
Less payments	= \$5,050.00
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.
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**ARBITRATION PANEL**

Alexandra L. Dunaiif  
Ann C. Northern, Esq.  
Linda S. Cole

Public Arbitrator, Presiding Chair  
Public Arbitrator  
Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument is which is my award.

  
Alexandra L. Dunaiif  
Public Arbitrator, Presiding Chairperson

5/28/04  
Signature Date

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Ann C. Northern, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Linda S. Cole  
Non-Public Arbitrator

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

June 2, 2004  
\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

Alexandra L. Dunaif	-	Public Arbitrator, Presiding Chair
Ann C. Northern, Esq.	-	Public Arbitrator
Linda S. Cole	-	Non-Public Arbitrator

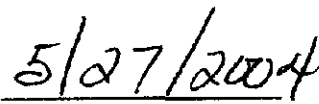
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Public Arbitrator

  
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Public Arbitrator

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Signature Date

  
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Linda S. Cole  
Non-Public Arbitrator

5/27/04  
Signature Date

June 2, 2004

Date of Service (For NASD Dispute Resolution use only)