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

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In the Matter of the Arbitration Between:

Names of the Claimants  
Michael A. Freedland  
Marilyn Freedland

Case Number: 03-00403

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

Hearing Site: Boca Raton, Florida

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

**REPRESENTATION OF PARTIES**

For Michael A. Freedland and Marilyn Freedland, hereinafter collectively referred to as "Claimants": Vincent J. D'Antonio, Esq., Gold D'Antonio & Strauss, P.A., Plantation, Florida.

For Morgan Stanley DW, Inc. ("MSDW") and Robert Smith ("Smith"), hereinafter collectively referred to as "Respondents": Jason M. Fedo, Esq., Greenberg Traurig, P.A., West Palm Beach, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: January 16, 2003.

Claimants signed but did not date the Uniform Submission Agreement.

Statement of Answer filed by Respondents on or about: April 28, 2003.

Respondent MSDW did not file an executed Uniform Submission Agreement.

Respondent Smith did not file an executed Uniform Submission Agreement.

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of fiduciary duty; negligence; churning; unsuitable investments; violation of Chapter 517 of the Florida Statutes; violation of the NASD Rules of Fair Practice; violation of the Securities Exchange Act of 1934; and, respondeat superior. The causes of action relate to the purchase of unspecified technology stock in the Claimants' accounts.

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

**RELIEF REQUESTED**

Claimants requested compensatory damages of \$785,279.00, interest in the sum of \$102,000.00, attorneys' fees, costs and expenses, and punitive damages in an amount to be determined by the Panel.

Respondents requested that the Panel dismiss the Statement of Claim in its entirety and award Respondents their fees and expenses, including costs, attorneys' fees and such other and further relief as the Panel deemed appropriate.

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

Respondents MSDW and Smith did not file with NASD Dispute Resolution ("NASD") properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and having answered the claim are bound by the determination of the Panel on all issues submitted.

On or about July 22, 2004, the parties advised NASD that they had settled this matter.

On or about August 27, 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 reference to the above captioned arbitration from Respondent Smith'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 Smith must obtain confirmation from a court of competent jurisdiction before the NASD 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	= \$ 375.00
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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 events giving rise to the dispute. Accordingly, Respondent MSDW is a member firm and a party.

Member surcharge	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$4,000.00</u>

Total Member Fees = \$7,000.00

**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 the Panel @ \$1,200.00/session	= \$1,200.00
Pre-hearing conference: September 10, 2003 1 session	

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Total Forum Fees	= \$1,200.00
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The Panel assessed forum fees of \$600.00 to Claimants, jointly and severally.

The Panel assessed forum fees of \$600.00 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**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 600.00
Total Fees	= \$ 975.00
Less payments	= \$ 975.00
Balance Due NASD Dispute Resolution	= \$ 0.00

NASD Dispute Resolution  
Arbitration No. 03-00403  
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Respondent MSDW is solely liable for:

<u>Member Fees</u>	= \$7,000.00
<u>Total Fees</u>	= \$7,000.00
<u>Less payments</u>	= \$7,000.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 600.00
<u>Total Fees</u>	= \$ 600.00
<u>Less payments</u>	= \$ 372.50
<u>Balance Due NASD Dispute Resolution</u>	= \$ 227.50

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

**ARBITRATION PANEL**

Robert D. Boettigheimer	-	Public Arbitrator, Presiding Chairperson
Craig E. Stein, Esq.	-	Public Arbitrator
Robert A. Fabricant, MBA	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
Robert D. Boettigheimer  
Public Arbitrator, Presiding Chairperson

September 21, 2004  
Signature Date

/s/  
Craig E. Stein, Esq.  
Public Arbitrator

September 8, 2004  
Signature Date

/s/  
Robert A. Fabricant, MBA  
Non-Public Arbitrator

September 10, 2004  
Signature Date

September 24, 2004  
Date of Service (For NASD Dispute Resolution office use only)

Member Fees	= \$7,000.00
Total Fees	= \$7,000.00
Less payments	= \$7,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Forum Fees	= \$ 600.00
Total Fees	= \$ 600.00
Less payments	= \$ 372.50
Balance Due NASD Dispute Resolution	= \$ 227.50

### ARBITRATION PANEL

Robert D. Boettigheimer	-	Public Arbitrator, Presiding Chairperson
Craig E. Stein, Esq.	-	Public Arbitrator
Robert A. Fabricant, MBA	-	Non-Public Arbitrator

Robert D. Boettigheimer  
Robert D. Boettigheimer

9/21/04  
Signature Date

Signature Date

Signature Date

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Respondent MSDW is solely liable for:

Member Fees	
Total Fees	= \$7,000.00
Less payments	= \$7,000.00
Balance Due NASD Dispute Resolution	= \$7,000.00
	= \$ 0.00

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**ARBITRATION PANEL**

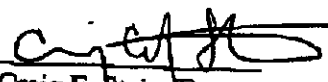
Robert D. Boettigheimer  
Craig E. Stein, Esq.  
Robert A. Fabricant, MBA

Public Arbitrator, Presiding Chairperson  
Public Arbitrator  
Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Robert D. Boettigheimer  
Public Arbitrator, Presiding Chairperson

Signature Date

  
Craig E. Stein, Esq.  
Public Arbitrator

Sept. 8, 2004  
Signature Date

Robert A. Fabricant, MBA  
Non-Public Arbitrator

Signature Date

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

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Respondent MSDW is solely liable for:

Member Fees	FL ARBITRATION = \$7,000.00
Total Fees	= \$7,000.00
Less payments	= \$7,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

Forum Fees	= \$ 600.00
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Less payments	= \$ 372.50
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ARBITRATION PANEL

Robert D. Boettigheimer	-	Public Arbitrator, Presiding Chairperson
Craig E. Stein, Esq.	-	Public Arbitrator
Robert A. Fabricant, MBA	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Robert D. Boettigheimer  
Public Arbitrator, Presiding Chairperson

Signature Date

Craig E. Stein, Esq.  
Public Arbitrator

Signature Date

*Robert A. Fabricant, MBA*  
Robert A. Fabricant, MBA  
Non-Public Arbitrator

*SEP 16, 2004*  
Signature Date

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