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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Roger King

Case Number: 03-00710

Names of the Respondents  
Eric Williams  
Morgan Stanley Dean Witter

Hearing Site: Boca Raton, Florida

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

**REPRESENTATION OF PARTIES**

For Roger King, hereinafter referred to as "Claimant": David M. Goldstein, Esq., Law Offices of David M. Goldstein, P.A., Miami, Florida.

For Respondent Eric Williams ("Williams"): Michael Kalmus, Esq., Law Offices of Michael Kalmus, New York, New York.

For Respondent Morgan Stanley Dean Witter ("MSDW"): Bradford D. Kaufman, Esq. and Joseph C. Coates, III, Esq., Greenberg Traurig, P.A., West Palm Beach, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: January 28, 2003.

Claimant signed the Uniform Submission Agreement: January 28, 2004.

Statement of Answer filed by Respondent Williams on or about: May 1, 2003.

Respondent Williams signed the Uniform Submission Agreement: April 30, 2003.

Response to Respondent Williams' Affirmative Defenses filed by Claimant on or about: May 30, 2003.

Statement of Answer filed by Respondent MSDW on or about: May 1, 2003.

Respondent MSDW signed the Uniform Submission Agreement: March 25, 2003.

Response to Respondent MSDW's Affirmative Defenses filed by Claimant on or about: May 30, 2003.

Memorandum in Support of Motion to Dismiss filed by Respondent MSDW on or about: February 3, 2004.

Response to Respondent MSDW's Memorandum in Support of Motion to Dismiss filed by Claimant on or about: February 19, 2004.

Reply Memorandum of Respondent MSDW in Support of Motion to Dismiss filed on or about: March 29, 2004.

Memorandum in Support of Motion to Dismiss filed by Respondent Williams on or about: March 26, 2004.

Notice of Voluntary Dismissal (of Rico charges) and Motion to Amend Statement of Claim to Add Respondents filed by Claimant on or about: May 6, 2004.

### **CASE SUMMARY**

Claimant asserted the following causes of action: churning; fraud; unsuitability; violations of the NASD and NYSE rules and regulations; violations of the Investment Advisor's Act of 1940; and, state and federal RICO violations. The causes of action relate to the purchase and sale of unspecified common stocks and options in Claimant's account.

Unless specifically admitted in their Answers, Respondents denied the allegations of wrongdoing set forth in the Statement of Claim and asserted the following defenses: failure to state a claim; Claimant's failure to mitigate damages; third-party investment advisor; ratification; waiver; estoppel; assumption of risk; and, no private right of action for violation of the NASD or NYSE rules.

In his responses to the Answers, Claimant denied the allegations set forth in Respondents' Affirmative Defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$2,000,000.00, punitive damages in the amount of \$3,000,000.00, interest, costs and reasonable attorney's fees.

Respondent MSDW requested dismissal of the Statement of Claim in its entirety and such other relief as deemed appropriate by the Panel.

Respondent Williams requested dismissal of the Statement of Claim in its entirety, expungement of all references to this arbitration proceeding from Respondent Williams' Central Registration Depository ("CRD") record, costs, attorney's fees and such other relief as deemed appropriate by the Panel.

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

Respondents MSDW and Williams each filed Motions to Dismiss, in which they asserted that Claimant's Statement of Claim alleged no wrongdoing on the part of Respondents and that, pursuant to Rule 10214 of the NASD Code of Arbitration Procedure (the "Code"), the Panel has the inherent power to dismiss a claim prior to an evidentiary hearing. In his response, Claimant asserted, among other things, that Respondents' Motions to Dismiss were not filed in a timely manner, a motion to dismiss is not an appropriate mechanism for resolving an arbitration proceeding, and that significant issues of fact remain in dispute. On or about April 1, 2004, the Panel issued an Order denying Respondents' respective Motions to Dismiss.

On or about May 28, 2004, the Panel issued an Order granting Claimant's Motion to Amend the Statement of Claim.

On or about June 18, 2004, the parties entered into a confidential Settlement Agreement, which provided that Claimant and Respondent Williams would present to the Panel a Stipulated Award.

On or about June 24, 2004, and prior to Claimant's service of the Amended Statement of Claim, the parties filed with NASD Dispute Resolution a notice of settlement.

On or about November 29, 2004, the parties filed with NASD Dispute Resolution a proposed Stipulated Award for review and approval by the Panel.

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

In lieu of a hearing and upon motion of the parties for entry of a Stipulated Award, the Panel grants the motion and enters this Stipulated Award. After considering the pleadings and the parties' proposed Stipulated Award, the Panel, in full and final resolution of the issues submitted for determination, has determined to grant the following relief:

1. The Panel accepts Claimant's dismissal of all claims against Respondents, with prejudice.
2. The parties shall bear their own costs and attorney's fees.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Williams' registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Williams must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
4. All other requests for relief are hereby denied.

### 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	= \$ 600.00
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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	= \$3,350.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,500.00
Total Member Fees	= \$9,600.00

#### Adjournment Fees

No adjournments were requested in this matter.

**Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session.

No three-day cancellation fees were assessed 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 during this proceeding.

**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:

Three (3) Pre-hearing sessions with the Panel @ \$1,200.00/session	= \$3,600.00
Pre-hearing conferences:   October 28, 2003       1 session	
April 1, 2004         1 session	
January 20, 2005     1 session	

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Total Forum Fees	= \$3,600.00
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Pursuant to the agreement of the Parties, the Panel has assessed forum fees as follows:

\$800.00 to Claimant  
\$800.00 to Respondent MSDW  
\$2,000.00 to Respondent Williams

**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 during this proceeding.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 600.00
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<u>Forum Fees</u>	= \$ 800.00
<u>Total Fees</u>	= \$1,400.00
<u>Less payments</u>	= \$1,400.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Respondent MSDW is solely liable for:

<u>Member Fees</u>	= \$ 9,600.00
<u>Forum Fees</u>	= \$ 800.00
<u>Total Fees</u>	= \$10,400.00
<u>Less payments</u>	= \$ 9,600.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 800.00

Respondent Williams is solely liable for:

<u>Forum Fees</u>	= \$ 2,000.00
<u>Total Fees</u>	= \$ 2,000.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 2,000.00

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

**ARBITRATION PANEL**

Bill L. Richards	-	Public Arbitrator, Presiding Chairperson
Steven G. Montesi	-	Public Arbitrator
Sandra J. Bakalus	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
Bill L. Richards  
Public Arbitrator, Presiding Chairperson

January 25, 2005  
Signature Date

/s/  
Sandra J. Bakalus  
Non-Public Arbitrator

January 26, 2005  
Signature Date

/s/  
Steven G. Montesi  
Public Arbitrator

January 27, 2005  
Signature Date

January 27, 2005  
Date of Service (For NASD Dispute Resolution office use only)



NASD Dispute Resolution  
Arbitration No. 03-00710  
Stipulated Award Page 5

Forum Fees	= \$ 800.00
Total Fees	= \$1,400.00
Less payments	= \$1,400.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent MSDW is solely liable for:

Member Fees	= \$ 9,600.00
Forum Fees	= \$ 800.00
Total Fees	= \$10,400.00
Less payments	= \$ 9,600.00
Balance Due NASD Dispute Resolution	= \$ 800.00

Respondent Williams is solely liable for:

Forum Fees	= \$ 2,000.00
Total Fees	= \$ 2,000.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 2,000.00

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Steven G. Montesi	-	Public Arbitrator
Sandra J. Bakalus	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Bill L. Richards  
Public Arbitrator, Presiding Chairperson

1/25/05  
Signature Date

Sandra J. Bakalus  
Non-Public Arbitrator

Signature Date

Steven G. Montesi  
Public Arbitrator

Signature Date

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**NASD Dispute Resolution**  
**Arbitration No. 03-00710**  
**Stipulated Award Page 5**

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Respondent MSDW is solely liable for:

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<u>Forum Fees</u>	= \$ 800.00
<u>Total Fees</u>	= \$10,400.00
<u>Less payments</u>	= \$ 9,600.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 800.00

Respondent Williams is solely liable for:

<u>Forum Fees</u>	= \$ 2,000.00
<u>Total Fees</u>	= \$ 2,000.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 2,000.00

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 Public Arbitrator, Presiding Chairperson

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

  
 Sandra J. Bakalus  
 Non-Public Arbitrator

  
 Signature Date

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 Public Arbitrator

\_\_\_\_\_  
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**NASD Dispute Resolution**

Arbitration No. 03-00710

Stipulated Award Page 5

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<u>Less payments</u>	= \$1,400.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent MSDW is solely liable for:

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<u>Forum Fees</u>	= \$ 800.00
<u>Total Fees</u>	= \$10,400.00
<u>Less payments</u>	= \$ 9,600.00
Balance Due NASD Dispute Resolution	= \$ 800.00

Respondent Williams is solely liable for:

<u>Forum Fees</u>	= \$ 2,000.00
<u>Total Fees</u>	= \$ 2,000.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 2,000.00

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Steven G. Montesi	-	Public Arbitrator
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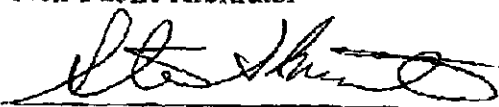
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1/27/05  
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