

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

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Name of Claimant

Scott P. Gabriele

and

03-01004  
Phoenix, Arizona

Name of Respondents

Morgan Stanley DW Inc.  
James S. Casey

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

**REPRESENTATION OF PARTIES**

Scott P. Gabriele ("Claimant") was represented by John C. Doyle, Esq., Doyle \* Mensing P.C., Scottsdale, Arizona.

Morgan Stanley DW Inc. ("Respondent MSDW") and James S. Casey ("Respondent Casey") were represented by Kevin H. Lewis, Esq., Howard Rice Nemerovski Canady Falk & Rabkin, San Francisco, California.

**CASE INFORMATION**

The Statement of Claim was filed on or about February 10, 2003. Submission Agreement of Claimant Scott P. Gabriele was signed on February 25, 2003.

Statement of Answer of Respondents was filed by Morgan Stanley DW Inc. and James S. Casey on or about April 24, 2003. Submission Agreement of Respondent Morgan Stanley DW Inc. was signed on April 23, 2003 by Mauricio S. Beugelmans. Submission Agreement of Respondent James S. Casey was signed on April 3, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: fraud; breach of fiduciary duty; breach of contract; negligence; and breach of covenant of good faith and fair dealing. The causes of action relate to the Claimant's allegations that Respondent Casey made material misrepresentations in connection with his purchase of shares of MSDW High Yield B mutual fund.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated

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Claimant was a sophisticated investor with a high tolerance for risk. Claimant's unsolicited trading – along with his stated investment objectives – substantiate this point. Additionally, recommending HYL BX was suitable for Claimant's desire to derive income from a sector of his portfolio. This objective was partially achieved by the relatively small HYL BX position (6.7%-11.4% of the account value), which provided monthly payments totaling \$17,500 over only nineteen months.

### **RELIEF REQUESTED**

Claimant requested an award as follows:

- Damages in the amount of \$75,184.00;
- Interest;
- Costs; and
- Such other relief as the court deems just and proper.

Respondents requested that the panel:

- Dismiss the Claim in its entirety;
- Order that this matter be permanently expunged from Mr. Casey's Form U-5 on file with the NASD and Central Registration Depository;
- Award Respondents their costs and fees in defending this claim; and
- Award Respondents such other relief as may be just, proper, and provided by law.

### **OTHER ISSUES CONSIDERED & 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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "NASD").

### **AWARD**

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

1. Respondents Morgan Stanley DW Inc. and James S. Casey shall be and hereby are jointly

and severally liable for and shall pay to Claimant Scott P. Gabriele the sum of \$15,000.00  
~~(Fifteen Thousand Dollars)~~ as compensatory damages.

2. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees, not specifically awarded or otherwise provided for above.

### **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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is Morgan Stanley DW Inc.

Member surcharge	\$	1,100.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	1,700.00
Total Member Fees	\$	3,550.00

#### **Forum Fees and Assessments**

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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:

2	Pre-hearing session(s) with a single arbitrator	x	\$450.00	\$	900.00
	January 29, 2004	1	Session		
	February 6, 2004	1	Session		
1	Pre-hearing session(s) with Panel	x	750.00	\$	750.00

	September 24, 2003	1	Session		
2	Hearing sessions	x	750.00	\$	1,500.00
	February 23, 2004	2	sessions		
	Total Forum Fees			\$	3,150.00

The Arbitration Panel has assessed \$1,575.00 of the forum fees to Scott P. Gabriele.  
The Arbitration Panel has assessed \$1,575.00 of the forum fees jointly and severally to Morgan Stanley DW Inc. and James S. Casey.

**Fee Summary**

Claimant, Scott P. Gabriele, shall be and hereby is liable for:

Initial Filing Fee	= \$	225.00
<u>Forum Fees</u>	= \$	1,575.00
Total Fees	= \$	1,800.00
<u>Less payments</u>	= \$	-975.00
Balance Due NASD Dispute Resolution	= \$	825.00

Respondent, Morgan Stanley DW Inc., shall be and hereby is liable for:

Member Fees	= \$	3,550.00
<u>Forum Fees</u>	= \$	0.00
Total Fees	= \$	3,550.00
<u>Less payments</u>	= \$	-3,550.00
Balance Due NASD Dispute Resolution	= \$	0.00

Respondents, Morgan Stanley DW Inc., and James S. Casey, shall be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$	1,575.00
Total Fees	= \$	1,575.00
<u>Less payments</u>	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	1,575.00

**All balances are due to NASD Dispute Resolution**

**ARBITRATION PANEL**

S. Jeffrey Minker - Public Arbitrator, Presiding Chair  
Daniel J. Danvir - Public Arbitrator  
Dan B. Williams - Non-Public Arbitrator

~~Concurring Arbitrators:~~

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/s/ S. Jeffrey Minker  
S. Jeffrey Minker  
Public Arbitrator, Presiding Chair

March 1, 2004  
Signature Date

/s/ Daniel J. Danvir  
Daniel J. Danvir  
Public Arbitrator

March 1, 2004  
Signature Date

/s/ Dan B. Williams  
Dan B. Williams  
Non-Public Arbitrator


March 1, 2004  
Signature Date


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Concurring Arbitrators:

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S. Jeffrey Minker  
Public Arbitrator, Presiding Chair

  
Signature Date

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Daniel J. Danvir  
Public Arbitrator

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

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Dan B. Williams  
Non-Public Arbitrator

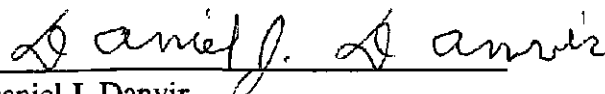
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Signature Date

Concurring Arbitrators:

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S. Jeffrey Minker  
Public Arbitrator, Presiding Chair

Signature Date

  
Daniel J. Danvir  
Public Arbitrator

  
MAR. 1, 2004  
Signature Date

Dan B. Williams  
Non-Public Arbitrator

Signature Date

Concurring Arbitrators:

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S. Jeffrey Minker  
Public Arbitrator, Presiding Chair

Signature Date

Daniel J. Danvir  
Public Arbitrator

Signature Date



*March 1, 2004*

Dan B. Williams  
Non-Public Arbitrator

Signature Date