

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

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In the Matter of the Arbitration Between:

Bruce Holter, Claimant v. Morgan Stanley DW Inc., Timothy Floyd Hyatt and William Benjamin Ford, Respondents

Case Number: 03-02287

Hearing Site: Portland, Oregon

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

**REPRESENTATION OF PARTIES**

For Claimant:

James Jay Seltzer, Esq.  
Law Offices of James Jay Seltzer  
Emeryville, California

For Respondents:

Paul D. Allen Esq.  
Bingham McCutchen  
San Francisco, California

**CASE INFORMATION**

Statement of Claim filed: March 27, 2003

Claimant's Uniform Submission Agreement signed: February 24, 2003

Joint Statement of Answer filed by Respondents: July 22, 2003

Respondent Morgan Stanley DW Inc.'s Uniform Submission Agreement signed: August 7, 2003

Respondent William Benjamin Ford's Uniform Submission Agreement signed: July 14, 2003

Respondent Timothy Floyd Hyatt's Uniform Submission Agreement signed: July 15, 2003

### **CASE SUMMARY**

Claimant alleged breach of contract, margin calls, negligence, failure to supervise, breach of fiduciary duty, churning, omission of facts, suitability, unauthorized trading, violation of Corporation Code §25401 and §24404.1, elder abuse, breach of the implied covenant of good faith and fair dealing, and common law fraud. Claimant's allegations involved investments in high technology stocks.

Respondents denied the allegations of wrongdoing as set forth in the Claimant's Statement of Claim and asserted affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested unspecified compensatory damages, \$2,500,000.00 in punitive damages, treble damages, pre-judgment interest, and costs, including attorney's fees.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety, expungement of all reference to the above-captioned arbitration from Respondent Timothy Floyd Hyatt and William Benjamin Ford's registration records maintained by the NASD Central Registration Depository ("CRD"), and costs, including attorney's fees.

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

On or about November 4, 2004, Claimant dismissed all claims against Respondent William Benjamin Ford with prejudice.

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.

### **STIPULATION**

The Parties stipulate that all claims asserted by Claimants against Respondents have been resolved.

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

### **STIPULATED AWARD**

After considering the pleadings, and the Parties' request for a Stipulated Award, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) The Panel notes the Parties' Stipulation that all claims asserted by the Claimant against Respondents have been resolved.
- 2) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Timothy F. Hyatt's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Timothy F. Hyatt must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 3) The parties shall bear their respective costs, including attorney's fees.
- 4) All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 500.00
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#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Morgan Stanley DW Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 2,800.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 5,000.00</u>
<b>Total Member Fees</b>	<b>= \$ 8,550.00</b>

**Adjournment Fees**

The following adjournment fees are assessed:

June 29, 2004 - July 1, 2004 adjournment requested by Respondents = Waived

**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.

Cancellation of November 17-19, 2004 hearing dates: =\$ 300.00

1. The Panel assessed \$150.00 of the 3-day cancellation fee Claimant.
2. The panel assessed \$150.00 of the 3-day cancellation fee jointly and severally to Respondents Morgan Stanley DW Inc. and Timothy F. Hyatt.

**Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

(1) Pre-hearing conference session with the Panel @ \$1,200.00/session = \$1,200.00  
Pre-hearing conference: October 17, 2003 1 session

(1) Hearing session @ \$1,200.00/session = \$1,200.00  
Hearing: November 16, 2004 1 session

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**Total Forum Fees = \$2,400.00**

1. The Panel assessed \$1,200.00 of the forum fees to Claimant.
2. The Panel assessed \$600.00 of the forum fees jointly and severally to Respondents Morgan Stanley DW Inc. and Timothy F. Hyatt.
3. The Panel assessed \$600.00 of the forum fees jointly and severally to Respondents Morgan Stanley DW Inc., Timothy F. Hyatt, and William Benjamin Ford.

**Fee Summary**

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 500.00
Three-Day Cancellation Fee	= \$ 150.00
Forum Fees	= \$ 1,200.00
Total Fees	= \$ 1,850.00
Less payments	= \$(1,700.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 150.00</b>

2. Respondent Morgan Stanley DW Inc. is charged with the following fees and costs:

Member Fees	= \$ 8,550.00
Less payments	= \$(8,550.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

3. Respondents Morgan Stanley DW Inc. and Timothy F. Hyatt are charged jointly and severally with the following fees and costs:

Forum Fee	= \$ 600.00
Three-Day Cancellation Fee	= \$ 150.00
Total Fees	= \$ 750.00
Less payments	= \$ (0.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 750.00</b>

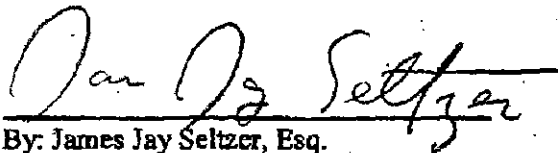
4. Respondents Morgan Stanley DW Inc., Timothy F. Hyatt, and William Benjamin Ford are charged jointly and severally with the following fees and costs:

Forum Fee	= \$ 600.00
Less payments	= \$ (0.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 600.00</b>

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

**PARTIES SIGNATURES**

LAW OFFICES OF JAY SELTZER



By: James Jay Seltzer, Esq.  
For and on Behalf of Claimant  
Bruce Holter

BINGHAM McCUTCHEON



By: Paul D. Allen, Esq.  
For and on behalf of Respondents  
MorganStanley DW Inc. and  
Timothy F. Hyatt

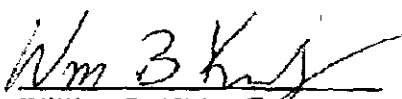
ARBITRATION PANEL

William B. Kirby, Esq.  
Bert P. Krages, II  
R. Lee Smith

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Public Arbitrator, Presiding Chair  
Public Arbitrator  
Non-Public Arbitrator

Concurring Arbitrators' Signatures

  
William B. Kirby, Esq.  
Chair, Public Arbitrator

11 March '05  
Signature Date

Bert P. Krages, II  
Public Arbitrator

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

R. Lee Smith  
Non-Public Arbitrator

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

3/14/05  
Date of Service

**ARBITRATION PANEL**

William B. Kirby, Esq.	-	Public Arbitrator, Presiding Chair
Bert P. Krages, II	-	Public Arbitrator
R. Lee Smith	-	Non-Public Arbitrator

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William B. Kirby, Esq.  
Chair, Public Arbitrator

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

Bert P. Krages II  
Bert P. Krages, II  
Public Arbitrator

March 5, 2005  
Signature Date

\_\_\_\_\_  
R. Lee Smith  
Non-Public Arbitrator

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

3/14/05  
Date of Service



ARBITRATION PANEL

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Bert P. Krages, II  
R. Lee Smith

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- Public Arbitrator  
- Non-Public Arbitrator

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Chair, Public Arbitrator

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Signature Date

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Bert P. Krages, II  
Public Arbitrator

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

  
R. Lee Smith  
Non-Public Arbitrator

3-5-05  
Signature Date

3/14/05  
Date of Service