

**Stipulated Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant  
Stephen Vaux

Case Number: 03-03101

Names of the Respondents  
Leonard Fox  
Janney Montgomery Scott, LLC  
Dean Witter Reynolds, Inc. n/k/a  
Morgan Stanley DW, Inc.

Hearing Site: Philadelphia, PA

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

**REPRESENTATION OF PARTIES**

Claimant, Stephen Vaux, hereinafter referred to as "Claimant", was represented by Christine M. Kovan, Esq., Sonneblick, Parker & Selvers, P.C., Freehold, New Jersey.

Respondent, Janney Montgomery Scott, LLC ("Janney"), was represented by Christine M. Kovan, Esq., Saul Ewing, LLP, Wayne, Pennsylvania.

Respondents, Leonard Fox ("Fox") and Dean Witter Reynolds, Inc. n/k/a Morgan Stanley DW, Inc. ("Morgan Stanley"), were represented by Gary E. Jackson, Esq. Morgan Stanley, New York, New York.

**CASE INFORMATION**

Statement of Claim filed April 28, 2003.

Claimant filed an undated Uniform Submission Agreement on April 28, 2003.

Statement of Answer filed by Respondent Janney on July 30, 2003.

Statement of Answer filed by Respondents Fox and Morgan Stanley on July 25, 2003.

A representative of Respondent Morgan Stanley signed the Uniform Submission Agreement on July 25, 2003.

Respondents Fox and Janney did not file Uniform Submission Agreements.

### **CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty; unsuitability; false representation; fraud; negligence; failure to supervise; breach of contract; *respondeat superior*; control person liability; and, other violations of federal and state securities laws. The causes of action relate to the purchase and sale of unspecified securities.

Unless specifically admitted in its Answer, Respondent Janney denied the allegations made in the Statement of Claim and asserted the following defenses among others: failure to state a claim; statutes of limitation; contributory negligence; failure to mitigate; ratification; and, laches and estoppel.

Unless specifically admitted in their Answer, Respondents Fox and Morgan Stanley denied the allegations made in the Statement of Claim and asserted the following defenses among others: failure to state a claim; statutes of limitation; contributory negligence; failure to mitigate; ratification; and, laches and estoppel.

### **RELIEF REQUESTED**

Claimant requested \$175,000.00 in compensatory damages and punitive, interest, attorneys' fees and costs in unspecified amounts.

Respondent Janney requested that Claimant's claim for damages be denied and that costs including attorneys' fee be assessed against Claimant.

Respondents Fox and Morgan Stanley requested that Claimant's claim for damages be denied and that costs including attorneys' fees be assessed against Claimant.

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

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

Prior to the hearing, the parties fully and finally settled all claims by and between them. Therefore, the parties submit this Stipulated Award to the Panel for its consideration and request that it be entered.

The parties have agreed that the Stipulated Award in this matter may be executed in counterpart copies.

### **AWARD**

Pursuant to the above, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The parties have amicably resolved their differences and have requested this Stipulated Award;
2. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent Fox'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 Fox 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 attorneys' fees, except as Fees are specifically addressed below; and,
4. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

### **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 = \$300.00

#### **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 person at the time of the events giving rise to the dispute. Accordingly, Janney and Morgan Stanley are parties.

##### **Janney**

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

##### **Morgan Stanley**

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

**Forum Fees**

The Panel has assessed forum fees for each session conducted. A 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:

Two (2) Pre-hearing sessions with Panel @ \$1,125.00 = \$2,250.00  
Pre-hearing conferences: December 9, 2003 1 session  
September 13, 2004 1 session

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Total Forum Fees = \$2,250.00

1. The Panel has assessed \$1,125.00 of the forum fees to Claimant.
2. The Panel has assessed \$562.50 of the forum fees to Respondents Janney, Fox and Morgan Stanley, jointly and severally.
3. The Panel has assessed \$562.50 of the forum fees to Respondents Janney and Fox, jointly and severally.

**Fee Summary**

1. Claimant is assessed and shall pay:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$1,125.00</u>
Total Fees	= \$1,425.00
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Respondents Fox, Janney and Morgan Stanley are jointly and severally assessed and shall pay:

<u>Forum Fees</u>	<u>= \$ 562.50</u>
Total Fees	= \$ 562.50
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 562.50

3. Respondents Fox and Janney are jointly and severally assessed and shall pay:

<u>Forum Fees</u>	<u>= \$ 562.50</u>
Total Fees	= \$ 562.50
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 562.50

4. Respondent Janney is assessed and shall pay:

<u>Member Fees</u>	<u>= \$5,200.00</u>
Total Fees	= \$5,200.00
<u>Less payments</u>	<u>= \$2,450.00</u>
Balance Due NASD Dispute Resolution	= \$2,750.00

5. Respondent Morgan Stanley is assessed and shall pay:

Member Fees	
Total Fees	= \$5,200.00
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$5,200.00
	= \$ 0.00

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

**ARBITRATION PANEL**

William J. Hirsch, Esq.  
Alfred Fingerman  
David Denison

• Public Arbitrator, Presiding Chairperson  
• Public Arbitrator, Panelist  
• Non-Public Arbitrator, Panelist

**Concurring Arbitrators' Signatures**

William J. Hirsch

William J. Hirsch, Esq.  
Public Arbitrator, Presiding Chairperson

Feb. 8, 2005

Signature Date

Alfred Fingerman  
Public Arbitrator, Panelist

Signature Date

David Denison  
Non-Public Arbitrator, Panelist

Signature Date

March 10, 2005

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

5. Respondent Morgan Stanley is assessed and shall pay:

Member Fees	= \$5,200.00
Total Fees	= \$5,200.00
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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**ARBITRATION PANEL**

William J. Hirsch, Esq.	-	Public Arbitrator, Presiding Chairperson
Alfred Fingerman	-	Public Arbitrator, Panelist
David Denison	-	Non-Public Arbitrator, Panelist

**Concurring Arbitrators' Signatures**

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William J. Hirsch, Esq.  
Public Arbitrator, Presiding Chairperson

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

  
\_\_\_\_\_  
Alfred Fingerman  
Public Arbitrator, Panelist

Feb 9, '05  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
David Denison  
Non-Public Arbitrator, Panelist

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

March 10, 2005  
\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution office use only)

5. Respondent Morgan Stanley is assessed and shall pay:

Member Fees	= \$5,200.00
Total Fees	= \$5,200.00
Less payments	= \$5,200.00
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.

**ARBITRATION PANEL**

William J. Hirsch, Esq.  
Alfred Fingerman  
David Denison

- Public Arbitrator, Presiding Chairperson  
- Public Arbitrator, Panelist  
- Non-Public Arbitrator, Panelist

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William J. Hirsch, Esq.  
Public Arbitrator, Presiding Chairperson

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Signature Date

\_\_\_\_\_  
Alfred Fingerman  
Public Arbitrator, Panelist

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

David Denison  
David Denison  
Non-Public Arbitrator, Panelist

March 9, 2005  
Signature Date

March 10, 2005  
Date of Service (For NASD Dispute Resolution)