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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Michael H. Garland

Case Number: 03-04028

Names of the Respondents  
Morgan Stanley Dean Witter, Inc.  
Joseph Weston, Jr.  
Chip Wright  
Daniel Murphy

Hearing Site: Tampa, Florida

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

**REPRESENTATION OF PARTIES**

For Michael Garland, hereinafter referred as "Claimant": Patrick A. Davis, Esq., Clearwater, Florida.

For Morgan Stanley Dean Witter, Inc. ("Morgan Stanley"), Joseph Weston, Jr. ("Weston"), Chip Wright ("Wright") and Daniel Murphy ("Murphy"), hereinafter collectively referred to as "Respondents": Tucker H. Byrd, Esq. and Jennifer Tomsen, Esq., Greenberg Traurig, P.A., Orlando, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: May 30, 2003.

Claimant signed the Uniform Submission Agreement: May 21, 2003.

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

Respondent Wright signed the Uniform Submission Agreement: August 18, 2003.

Respondent Weston signed the Uniform Submission Agreement: August 18, 2003.

Respondent Murphy signed the Uniform Submission Agreement: August 18, 2003.

Respondent Morgan Stanley signed the Uniform Submission Agreement: August 28, 2003.

Motion to Amend Statement of Claim filed on or about: October 14, 2004.

Response to Motion to Amend filed on or about: October 15, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: fraud; breach of fiduciary duties; negligence; gross negligence; negligent supervision; and, unjust enrichment. The causes of action relate to the purchase and sale of unspecified securities products in Claimant's accounts.

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

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of not less than \$50,000.00, together with interest, commissions (and interest thereon) received by Respondents from the transactions at issue in this case, punitive damages, attorneys' fees, costs and such other relief as the arbitration panel (the "Panel") deemed appropriate, including but not limited to a rescission of the investment transactions referenced in the Statement of Claim.

Respondents requested that this claim be dismissed in its entirety and that any costs associated with this claim be borne by Claimant. Respondents further requested that Respondent Murphy's NASD Central Registration Depository ("CRD") record be expunged of all references to this matter.

**OTHER ISSUES CONSIDERED AND DECIDED**

On or about October 18, 2004, the Panel issued an Order that granted Claimant's Motion to Amend Statement of Claim.

At the outset of the evidentiary hearings, Claimant notified the Panel that Claimant dismissed, with prejudice, all claims asserted against Respondent Murphy.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

**AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondent Weston is solely liable on the claim for negligence and shall pay compensatory damages to Claimant in the amount of \$1,500.00, plus interest at the prevailing rate of 7%/annum from the date of the Award until payment of the Award to Claimant.

Respondent Morgan Stanley is solely liable on the claim for negligent supervision and shall pay compensatory damages to Claimant in the amount of \$10,500.00, plus interest at the prevailing rate of 7%/annum from the date of the Award until payment of the Award to Claimant.

Respondent Wright is not liable on any of the claims asserted by Claimant.

Claimant's claims of fraud, breach of fiduciary duty, unjust enrichment and gross negligence are dismissed, with prejudice.

Respondent Morgan Stanley is solely liable and shall reimburse Claimant the sum of \$87.50, representing one-half of the claim-filing fee paid by Claimant to NASD Dispute Resolution.

Each party shall bear their own attorneys' fees.

With the consent of the parties, the Panel finds that Respondent Murphy was not involved in the alleged investment-related sales practice violations. Respondent Murphy did not become Branch Manager until almost two years after the investments at issue in this case were made. Respondent Murphy's only contact with Claimant was late in 2002, a few months before Claimant closed his accounts. Accordingly, the Panel recommends that all references to the above-captioned arbitration be expunged from Respondent Murphy's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Murphy must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages, are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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	= \$ 175.00
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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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent Morgan Stanley is a member firm and a party.

Member Surcharge	= \$ 875.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$1,000.00</u>
Total Member Fees	= \$2,625.00

#### **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.

Injunctive relief fees were not assessed 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 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 the Panel @ \$600.00/session	= \$1,200.00
Pre-hearing conferences:	
March 10, 2004	1 session
October 18, 2004	1 session

Six (6) Hearing sessions @ \$600.00/session	= \$3,600.00
Hearing Dates:	
October 19, 2004	2 sessions
October 20, 2004	2 sessions
October 21, 2004	2 sessions

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Total Forum Fees	= \$4,800.00
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The Panel has assessed forum fees of \$1,200.00 to Claimant.

The Panel has assessed forum fees of \$3,600.00 to Respondent Morgan Stanley.

**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.

There were no administrative costs incurred in this matter.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 175.00
Forum Fees	= \$1,200.00
Total Fees	= \$1,375.00
Less Payments	= \$ 775.00
Balance Due NASD Dispute Resolution	= \$ 600.00

Respondent Morgan Stanley is solely liable for:

Member Fees	= \$2,625.00
Forum Fees	= \$3,600.00
Total Fees	= \$6,225.00
Less Payments	= \$2,625.00
Balance Due NASD Dispute Resolution	= \$3,600.00

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

**ARBITRATION PANEL**

James Barry Wright	-	Public Arbitrator, Presiding Chairperson
John P. Cullem, Esq.	-	Public Arbitrator
Fred V. McCrindle	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/s/\_\_\_\_\_  
James Barry Wright  
Public Arbitrator, Presiding Chairperson

November 15, 2004  
Signature Date

\_\_\_\_\_/s/\_\_\_\_\_  
John P. Cullem, Esq.  
Public Arbitrator

November 15, 2004  
Signature Date

\_\_\_\_\_/s/\_\_\_\_\_  
Fred V. McCrindle  
Non-Public Arbitrator

November 15, 2004  
Signature Date

November 15, 2004  
Date of Service (For NASD Dispute Resolution office use only)

NOV. 12. 2004 6:16PM

NASD REGULATIONS

NO. 471 F. 6.6

**NASD Dispute Resolution**

Arbitration No. 03-04028

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

**ARBITRATION PANEL**

James Barry Wright

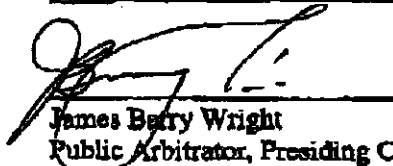
John P. Cullem, Esq.

Fred V. McCrindle

Public Arbitrator, Presiding Chairperson

Public Arbitrator

Non-Public Arbitrator

**Concurring Arbitrators' Signatures**  
James Barry Wright  
Public Arbitrator, Presiding Chairperson11/13/04  
Signature Date

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John P. Cullem, Esq.  
Public Arbitrator

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Signature Date

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Fred V. McCrindle  
Non-Public Arbitrator

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Signature Date

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

NOV. 12. 2004 6:08PM

NASD REGULATIONS

NO. 469 P. 6/6

NASD Dispute Resolution  
Arbitration No. 03-04028  
Award Page 5

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**ARBITRATION PANEL**

James Barry Wright  
John P. Cullem, Esq.  
Fred V. McCrindle


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Public Arbitrator, Presiding Chairperson  
Public Arbitrator  
Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

James Barry Wright  
Public Arbitrator, Presiding Chairperson

Signature Date

  
John P. Cullem, Esq.  
Public Arbitrator

11/15/04  
Signature Date

Fred V. McCrindle  
Non-Public Arbitrator

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James Barry Wright  
Public Arbitrator, Presiding Chairperson

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Signature Date

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John P. Cullem, Esq.  
Public Arbitrator

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Signature Date

  
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Fred V. McCrindle  
Non-Public Arbitrator

  
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