

**Stipulated Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant  
Marion Goldstein

Case Number: 03-05485

Names of the Respondents  
Morgan Stanley DW Inc. and  
Robert Smith

Hearing Site: Philadelphia, PA

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

**REPRESENTATION OF PARTIES**

Claimant Marion Goldstein ("Goldstein"), hereinafter referred to as "Claimant", was represented by Steven M. Dranoff, Esq., Dranoff Associates, Philadelphia, Pennsylvania, and by Nicholas Guiliano, Esq., The Guiliano Law Firm, Philadelphia, Pennsylvania.

Respondent Morgan Stanley DW Inc. ("Morgan Stanley"), hereinafter referred to as "Respondent Morgan Stanley", was represented by Lisa B. Dodge, Esq., Vice President, Morgan Stanley DW Inc. Law Division, Sarasota, Florida.

Respondent Robert Smith ("Smith"), hereinafter referred to as "Respondent Smith", was represented by Laura J. Starr, Esq., Peter J. Aldrich, P.A., Palm Beach Gardens, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about July 23, 2003.

Claimant signed the Uniform Submission Agreement on June 18, 2003.

Answer and Defenses filed by Respondent Morgan Stanley on October 10, 2003.

A representative of Respondent Morgan Stanley executed the Uniform Submission Agreement on October 10, 2003.

Respondent Smith did not file an Answer to the Statement of Claim.

Respondent Smith was not served with the Statement of Claim.

Respondent Smith signed the Uniform Submission Agreement on March 30, 2005.

**CASE SUMMARY**

Claimant asserted the following causes of action: (1) violation of Section 10(b) and Rule 10(b)(5); (2) violation of the NASD suitability rule; (3) violation of the Pennsylvania Unfair Trade Practice and Consumer Protection Law; (4) breach of fiduciary duty; (5) failure to supervise; and (6) common law fraud. The causes of action relate to the purchase and sale of various unspecified individual securities by the Claimant.

Unless specifically admitted in its Answer, Respondent Morgan Stanley denied the allegations made in the Statement of Claim and asserted the following defenses: (1) Claimant was fully

advised of and understood the nature of the investments purchased in her account and granted informed consent with respect to each transaction; (2) Claimant had full knowledge of the subject transactions and is precluded from recovery; (3) the decline in the value of the Claimant's investments was caused by events outside the control of Morgan Stanley; (4) Claimant ordered, approved, authorized, participated in and ratified the investment transaction in dispute; (5) Claimant's losses were caused by her own decisions, conduct and /or negligence; (6) Claimant's claims are barred as a result of her failure to exercise due diligence and her failure to disaffirm the transactions complained of in a timely manner; (7) Claimant's claims are barred as a result of her failure to mitigate her damages; (8) Claimant's tort claims for economic losses are barred as a matter of law; (9) Respondent acted at all times in good faith and exercised reasonable diligence; (10) Claimant's claims are barred in part by the applicable statutes of limitations and/or repose.

### **RELIEF REQUESTED**

Claimant requested the following damages: one hundred thousand dollars and zero cents (\$ 100,000.00) in compensatory damages, punitive damages, treble damages, interest, attorneys' fees, and costs.

Respondent Morgan Stanley requested that the claims be dismissed in their entirety, that all references to this dispute be expunged from Respondent Smith's records maintained at NASD Central Registration Depository ("CRD"), and that the Arbitration Panel (the "Panel") award judgment in favor of Respondents.

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

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 listed 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 Robert Scott Smith'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 Smith 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 and treble 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 firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Respondent Morgan Stanley is a party.

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00
Total Member Fees	= \$ 5,200.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

November 30, 2004 - December 2, 2004, adjournment by Claimant = fee waived

#### **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:

One (1) Pre-hearing session with Panel @ \$ 1,125	= \$ 1,125.00
Pre-hearing conference: February 3, 2004 1 session	
Total Forum Fees	= \$ 1,125.00

1. The Panel has assessed \$ 375.00 of the forum fees to Claimant.
2. The Panel has assessed \$ 375.00 of the forum fees to Respondent Morgan Stanley.
3. The Panel has assessed \$ 375.00 of the forum fees to Respondent Smith.

**SEE SUMMARY**

Claimant, Goldstein, is assessed and shall pay:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 375.00
Total Fees	= \$ 675.00
Less payments	= \$ 1,425.00
Refund owed to Claimant	= \$ 750.00

Respondent, Morgan Stanley, is assessed and shall pay:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 375.00
Total Fees	= \$ 5,575.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 375.00

Respondent, Smith, is assessed and shall pay:

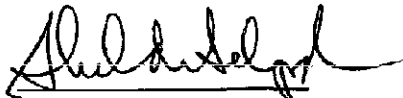
Forum Fees	= \$ 375.00
Total Fees	= \$ 375.00
Less payments	= \$ 00.00
Balance Due NASD Dispute Resolution	= \$ 375.00

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

**ARBITRATION PANEL**

Sheldon Seligsohn, Esq.	-	Public Arbitrator, Presiding Chairperson
David C. Carter	-	Public Arbitrator, Panelist
Lisette L. Tarragano	-	Non-Public Arbitrator, Panelist

**Concurring Arbitrators' Signatures**



Sheldon Seligsohn, Esq.  
Public Arbitrator, Presiding Chairperson

4/11/05  
Signature Date

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David C. Carter  
Public Arbitrator, Panelist

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

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Lisette L. Tarragano  
Non-Public Arbitrator, Panelist

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

April 15, 2005  
Date of Service (For NASD Dispute Resolution office use only)

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Sheldon Seligsohn, Esq.  
Public Arbitrator, Presiding Chairperson

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Signature Date



David C. Carter  
Public Arbitrator, Panelist

4-7-05

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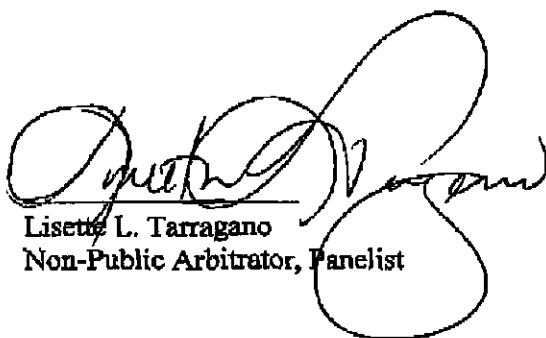
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Public Arbitrator, Panelist

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Lisette L. Tarragano  
Non-Public Arbitrator, Panelist

4-15-05  
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Signature Date

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