

Stipulated Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Theresa J. Heflin, Individually and as Personal
Representative of the Estate of Samuel R. Heflin, Jr.,
Claimants,

vs.

Morgan Stanley DW, Inc. and Robert Gessler,
Respondents

Case Number: 03-05532

Hearing Site: Nashville, TN

REPRESENTATION OF PARTIES

Claimant: Winston Evans, Esq., Evans, Jones & Reynolds, Nashville, TN.

Respondents: Gary E. Jackson, Esq., Morgan Stanley DW Inc., New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: July 28, 2003.

Claimants, Theresa J. Heflin, Individually and as Personal Representative of the Estate of Samuel R. Heflin, Jr., signed the Uniform Submission Agreements on or about: July 28, 2003.

Statement of Answer filed by Respondents, Morgan Stanley DW Inc., and Robert Gessler on or about: October 24, 2003.

Respondent, Morgan Stanley DW Inc., signed the Uniform Submission Agreement on or about: October 24, 2003.

Respondent, Robert Gessler, did not file a Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: breach of contract; negligence; breach of fiduciary duty; violations of federal and Tennessee securities statutes; gross negligence; and recklessness. The causes of action relate to the order execution of various securities investments. Claimants alleged that Respondents recommended unsuitable investments based on their financial situation.

Unless specifically admitted in their Answer, Respondents Morgan Stanley DW Inc. and Robert Gessler denied the allegations made in the Statement of Claim and asserted the following defenses: failure to state a claim; failure to mitigate; no negligence; suitable investment recommendations; and claimant was advised of the investment risks.

RELIEF REQUESTED

Claimants requested: Compensatory damages of \$300,000 plus punitive damages of \$700,000, interest in the amount of \$30,000, attorneys' fees and costs.

Respondents, Morgan Stanley DW Inc., and Robert Gessler requested: Dismissal of all claims and costs.

OTHER ISSUES CONSIDERED AND DECIDED

On or about July 26, 2004, NASD Dispute Resolution, Inc. was notified that the parties settled this matter.

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

AWARD

The parties entered into an agreement to present to the Panel a stipulated award. Now, in lieu of a hearing and upon motion of all parties for the entry of a stipulated award, the Panel grants the motion and the undersigned arbitrators order as follows:

- 1.) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Robert Gessler's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Robert Gessler must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive."
- 2.) Any and all relief not specifically enumerated, including punitive damages, is hereby denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:
Initial claim filing fee = \$375.00

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. In this matter, the member firm is Morgan Stanley DW, Inc.

Member surcharge	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= <u>\$4,000.00</u>
Total fees	= \$7,000.00

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

1 (One) Pre-hearing session with Panel x \$1,200	= \$1,200.00
Pre-hearing conference: January 21, 2004 1 session	
Total Forum Fees	= \$1,200.00

The parties have agreed to split the forum fees as follows:

Claimant, Theresa J. Heflin, shall pay \$600.00.

Respondents, Morgan Stanley DW, Inc. and Robert Gessler, jointly and severally, shall pay \$600.00.

Fee Summary

Claimant, Theresa J. Heflin, is liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 600.00
Total Fees	= \$ 975.00
Less payments	= <u>\$1,700.00</u>
Balance Refunded by NASD Dispute Resolution, Inc.	= \$ 725.00

Respondent, Morgan Stanley DW Inc., is solely liable for:

Member Fees	= \$7,000.00
Total Fees	= \$7,000.00
Less payments	= <u>\$7,000.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

Respondents, Morgan Stanley DW Inc., and Robert Gessler, jointly and severally, are liable for:

Forum Fees	= \$ 600.00
Total Fees	= \$ 600.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 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

Concurring Arbitrators' Signatures

/s/ John Manley, Esq.
John Manley, Esq.
Public Arbitrator, Presiding Chair

09/06/04
Signature Date

/s/ Carol Smith Nickle, Esq.
Carol Smith Nickle, Esq.
Public Arbitrator

09/09/04
Signature Date

/s/ Allen S. Bjork
Allen S. Bjork
Industry Arbitrator

09/04/04
Signature Date

09/10/04
Date of Service (For NASD office use only)

Respondents, Morgan Stanley DW Inc., and Robert Gessler, jointly and severally, are liable for:

<u>Forum Fees</u>	= \$ 600.00
<u>Total Fees</u>	= \$ 600.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 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

Concurring Arbitrators' Signatures


John Manley, Esq.
Public Arbitrator, Presiding Chair

9/6/2004
Signature Date

Carol Smith Nickle, Esq.
Public Arbitrator

Signature Date

Allen S. Bjork
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

Respondents, Morgan Stanley DW Inc., and Robert Gessler, jointly and severally, are liable for:

<u>Forum Fees</u>	= \$ 600.00
<u>Total Fees</u>	= \$ 600.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution, Inc.</u>	= \$ 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

Concurring Arbitrators' Signatures

John Manley, Esq.
Public Arbitrator, Presiding Chair

Signature Date



Carol Smith Nickle, Esq.
Public Arbitrator

9-7-04

Signature Date

Allen S. Bjork
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

Respondents, Morgan Stanley DW Inc., and Robert Gessler, jointly and severally, are liable for:

Forum Fees	= \$ 600.00
Total Fees	= \$ 600.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 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

Concurring Arbitrators' Signatures

John Manley, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Carol Smith Nickle, Esq.
Public Arbitrator

Signature Date



Allen S. Bjork
Industry Arbitrator

9-4-04

Signature Date

Date of Service (For NASD office use only)