

Stipulated Award  
NASD Dispute Resolution

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In the Matter of the Arbitration Between:

DR. JAMES P. DRABO,

Case Number: 03-06303

Claimant,

and

MORGAN STANLEY DEAN  
WITTER, INC., ANNE SCHMID, and  
SCOTT HESEKIEL,

Hearing Site: Washington, D.C.

Respondents.

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**REPRESENTATION OF PARTIES**

Claimant: James P. Drabo ("Drabo") was represented by William B. Young, Esquire, Hooper & Weiss, LLC, Orlando, Florida.

Respondent(s): Morgan Stanley Dean Witter, Inc. ("Morgan Stanley"), Anne Schmid ("Schmid"), and Scott Heseikel ("Heseikel"), collectively referred to as "Respondents," were represented by Kathleen A. Ellis, Esquire, Piper Rudnick LLP, Baltimore, Maryland and Julie K. Glynn, Esquire, Morgan Stanley Dean Witter, Inc., Purchase, New York.

**CASE INFORMATION**

Statement of Claim filed September 24, 2003

Claimant Drabo signed the Uniform Submission Agreement on May 26, 2003.

Statement of Answer filed by Respondents Morgan Stanley, Schmid, and Heseikel on November 13, 2003

Respondents Morgan Stanley, Schmid, and Heseikel signed the Uniform Submission Agreement on November 13, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: Unsuitability, Negligence, Breach of Contract, Breach of Fiduciary Duty, Respondeat Superior, Violation of NASD Rule (2110), Failure to Supervise, Omissions/Misrepresentations. Claimant complained about the Respondents' handling of his four retirement accounts during the period November 1999 through October 2002. He alleged that both Respondent Schmid and Respondent Heseikel pursued a high-risk investment strategy given his health and age solely in order to earn commissions.

Unless specifically admitted in their Answer, Respondents Morgan Stanley, Schmid, and Hesekeiel denied the allegations made in the Statement of Claim and asserted the following defenses: waiver, estoppel, ratification, assumption of the risk, contributory negligence, lack of causation, failure to mitigate damages.

### **RELIEF REQUESTED**

Claimant requested the following damages:

Compensatory Damages	\$481,854.87
Punitive Damages	\$ unstated
Interest	\$ none
Attorneys' Fees	\$ unstated
Other Costs	\$ unstated
Other Monetary/Non-Monetary Relief if any:	none

Respondents requested denial of all claims in their entirety, an order of expungement of the claim from Anne Schmid's and Scott Hesekeiel's CRDs, and an award of costs in favor of Morgan Stanley.

### **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. Respondents shall pay Claimant compensatory damages in the amount of \$25,000;
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Schmid's and Respondent Hesekeiel'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, Respondents Schmid and Hesekeiel 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, 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**

NASD Dispute Resolution will insert fees.

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

### **ARBITRATION PANEL**

T.S.L. Perlman	-	Public Arbitrator, Presiding Chairperson
Victor H. Dates, J.D.	-	Industry Arbitrator, Panelist
June White Dillard, Esquire	-	Public Arbitrator, Panelist

### **Concurring Arbitrators' Signatures**

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T.S.L. Perlman  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Victor H. Dates, J.D.  
Industry Arbitrator, Panelist

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

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June White Dillard, Esquire  
Public Arbitrator, Panelist

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

3/18/05

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

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Concurring Arbitrators' Signatures



T.S.L. Perlman

Public Arbitrator, Presiding Chairperson



Signature Date

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Victor H. Dates, J.D.

Non-Public Arbitrator, Panelist

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

\_\_\_\_\_  
June White Dillard, Esquire

Public Arbitrator, Panelist

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Signature Date

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Concurring Arbitrators' Signatures

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T.S.L. Peiman  
Public Arbitrator, Presiding Chairperson

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Signature Date

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Victor H. Dates, J.D.  
Non-Public Arbitrator, Panelist

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

*Jane White Dillard, Esq.*  
Jane White Dillard, Esquire  
Public Arbitrator, Panelist

*Feb. 10, 2005*  
Signature Date

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*attn: P. Coulson*  
*Arbitration Administrator*

Concurring Arbitrators' Signatures

\_\_\_\_\_  
T.S.L. Perlman  
Public Arbitrator, Presiding Chairperson

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Signature Date

*Victor H. Dates*

Victor H. Dates, J.D.  
Non-Public Arbitrator, Panelist

*Feb. 9, 2005*

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

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June White Dillard, Esquire  
Public Arbitrator, Panelist

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Signature Date

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