

**STIPULATED AWARD  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant

Barbara A. M. Giblin as the Executor of the Estate of Leonard J. Giblin

And

04-00450  
Chicago, Illinois

Name of Respondents

Morgan Stanley DW Inc.  
Jerald Jay Hymen

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

**REPRESENTATION OF PARTIES**

Barbara A. M. Giblin as the Executor of the Estate of Leonard J. Giblin ("**Claimant**") was represented by James Eccleston, Esq. and Ron Amato, Esq., Shaheen, Novoselsky, Staat, Filipowski and Eccleston, P.C., Chicago, Illinois.

Morgan Stanley DW Inc. ("**Respondent**") and Jerald Jay Hymen ("**Respondent**") hereinafter referred to as ("**Respondents**") were represented by Renan I. Sugarman, Esq., Renan Sugarman, P.C., Chicago, Illinois.

**CASE INFORMATION**

The Statement of Claim was filed in January 2004, together with Claimant's signed Submission Agreement.

Respondents' Statement of Answer was served on April 30, 2004 together with executed Uniform Submission Agreements.

**CASE SUMMARY**

Claimant alleged, *inter alia*, claims based on breach of contract, negligence, breach of fiduciary duty, negligent misrepresentation, violations of the Illinois Securities and Consumer Fraud Acts and failure to supervise.

Respondents denied each of the allegations and claims set forth in the Statement of Claim.

### **RELIEF REQUESTED**

Claimant requested an award of damages in the amount of \$250,000, plus pre-judgment interest, costs and attorneys' fees.

Respondents requested that the claims asserted against them be denied in their entirety, that this matter be expunged from the CRD record of Respondent Hymen, and that they be awarded their costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

The parties have entered into a Stipulation wherein they agreed;

- To dismiss, with prejudice, all claims asserted against Respondents;
- That Claimant does not oppose Respondents' request for an order expunging any reference of this matter from the public and non-public NASD and Central Registration Depository ("CRD") records of Respondent Hymen.
- Each party shall bear its own costs and attorney's fees. The NASD shall retain any fees already paid by the parties, subject to either party's right, under the Code, to obtain complete or partial refund of fees paid.

The parties have agreed that the Stipulated Award in this matter may be executed in counterpart copies. The parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "NASD").

### **AWARD**

After considering the pleadings and the stipulation of the parties, but without making any findings of fact or conclusions of law, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination and find as follows:

1. The Claimant dismisses, with prejudice, all claims asserted against Respondents Morgan Stanley DW Inc. and individual Respondent Jerald J. Hymen
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Jerald Jay Hymen'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 Jerald Jay Hymen must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

3. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees, not specifically awarded or otherwise provided for above.

### **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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is Morgan Stanley DW Inc.

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 requested during these proceedings:

Hearing Date(s), Hearing Date(s), May 17-19, 2005. = \$1,125.00

Fee waived pursuant to Rule 10403(b) of the NASD Code of Arbitration Procedure.

#### **Forum Fees and Assessments**

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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:

1	Pre-hearing session(s) with a single arbitrator	x	\$450.00	\$	450.00
	May 5, 2005	1	session		
2	Pre-hearing session(s) with Panel	x	1,125.00	\$	2,250.00
	August 26, 2004	1	session		
	January 5, 2005	1	session		
	Total Forum Fees			\$	2,700.00

The Arbitration Panel has assessed \$1,350.00 of the forum fees to Barbara A. M. Giblin as the Executor of the Estate of Leonard J. Giblin.

The Arbitration Panel has assessed \$1,350.00 of the forum fees jointly and severally to Morgan Stanley DW Inc. and Jerald Jay Hymen.

#### Fee Summary

Claimant, Barbara A. M. Giblin as the Executor of the Estate of Leonard J. Giblin, shall be and hereby is liable for:

Initial Filing Fee	= \$	300.00
<u>Forum Fees</u>	= \$	1,350.00
Total Fees	= \$	1,650.00
<u>Less payments</u>	= \$	-1,425.00
Balance Due NASD Dispute Resolution	= \$	225.00

Respondent, Morgan Stanley DW Inc., shall be and hereby is liable for:

Member Fees	= \$	5,200.00
Total Fees	= \$	5,200.00
<u>Less payments</u>	= \$	-5,200.00
Balance Due NASD Dispute Resolution	= \$	0.00

Respondents, Morgan Stanley DW Inc. and Jerald Jay Hymen, shall be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$	1,350.00
Total Fees	= \$	1,350.00
<u>Less payments</u>	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	1,350.00

**All balances are due to NASD Dispute Resolution**

**ARBITRATION PANEL**

Stuart D. Summers - Public Arbitrator, Presiding Chair  
James M. Casey - Public Arbitrator  
Dwight R. Erskine, II, CFP - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Stuart D. Summers  
Stuart D. Summers  
Public Arbitrator, Presiding Chair

June 21, 2005  
Signature Date

/s/ James M. Casey  
James M. Casey  
Public Arbitrator

June 15, 2005  
Signature Date

/s/ Dwight R. Erskine, II, CFP  
Dwight R. Erskine, II, CFP  
Non-Public Arbitrator

June 14, 2005  
Signature Date

June 21, 2005  
Date of Service (For NASD office use only)

FROM : STU SUMMERS  
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**ARBITRATION PANEL**

Stuart D. Summers - Public Arbitrator, Presiding Chair  
James M. Casey - Public Arbitrator  
Dwight R. Erskine, II, CFP - Non-Public Arbitrator

Concurring Arbitrators:

Stuart D. Summers

Stuart D. Summers  
Public Arbitrator, Presiding Chair

6-21-05

Signature Date

James M. Casey  
Public Arbitrator

Signature Date

Dwight R. Erskine, II, CFP  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

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Arbitration No. 04-00450  
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James M. Casey - Public Arbitrator  
Dwight R. Erskine, II, CFP - Non-Public Arbitrator

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Public Arbitrator, Presiding Chair

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Signature Date

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James M. Casey  
Public Arbitrator

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Dwight R. Erskine, II, CFP  
Non-Public Arbitrator

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Signature Date

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**ARBITRATION PANEL**

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James M. Casey - Public Arbitrator  
Dwight R. Erskine, II, CFP - Non-Public Arbitrator

Concurring Arbitrators:

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Public Arbitrator, Presiding Chair

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