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

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In the Matter of the Arbitration Between:

Names of the Claimants

Edwin B. Clarke  
Gail N. Clarke

Case Number: 04-00496

Names of the Respondents

Morgan Stanley Dean Witter  
Paul Ruthfield

Hearing Site: Boca Raton, Florida

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

**REPRESENTATION OF PARTIES**

For Edwin B. Clarke and Gail N. Clarke, hereinafter collectively referred to as "Claimants":  
Dennis M. Boyce, Esq., Dennis M. Boyce, P.A., Jupiter, Florida.

For Morgan Stanley Dean Witter ("MSDW") and Paul Ruthfield ("Ruthfield"), hereinafter collectively referred to as "Respondents": Peter J. Aldrich, Esq., Peter J. Aldrich, P.A., Palm Beach Gardens, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: January 26, 2004.

Claimants signed the Uniform Submission Agreement: November 7, 2003.

Statement of Answer filed by Respondents on or about: March 19, 2004.

Respondent MSDW signed the Uniform Submission Agreement: June 11, 2003.

Respondent Ruthfield did not submit an executed Uniform Submission Agreement.

**CASE SUMMARY**

Claimants alleged the following causes of action: 1) breach of fiduciary duty; 2) unsuitability; 3) churning; and 4) failure to supervise. The causes of action relate to Claimants' investments in unspecified securities.

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

**RELIEF REQUESTED**

Claimants requested: 1) compensatory damages in the amount of \$445,000.00; 2) interest; 3) costs; and attorneys' fees.

Respondents requested: 1) that this action be dismissed; 2) costs; and 3) that Respondents be awarded such other relief as the undersigned arbitrators (the "Panel") deemed just and proper.

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

Respondent Ruthfield did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement, but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim is bound by the determination of the Panel on all issues submitted.

On or about December 5, 2005, Claimants notified NASD Dispute Resolution that the parties had settled this matter and agreed to the entry of a Stipulated Award.

On or about December 13, 2005, the parties submitted a proposed Stipulated Award wherein the parties requested the expungement of the NASD Central Registration Depository ("CRD") records of Respondent Ruthfield.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies.

### **AWARD**

After considering the pleadings and the parties' proposed Stipulated Award, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimants voluntarily dismissed, with prejudice, the claims against Respondents MSDW and Ruthfield on November 30, 2005.
- 2) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Ruthfield's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Ruthfield must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 3) Claimants' claims for relief, including claims under Chapter 517 of the Florida Statutes, are dismissed with prejudice.
- 4) Any and all claims for relief not specifically addressed herein, including Claimants' request for costs and attorneys' fees, are denied with prejudice.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD 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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Respondent MSDW is a member firm and a party.

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

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments requested during these proceedings for which fees were assessed.

#### **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:

There were no three-day cancellation fees assessed during these proceedings.

#### **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.

There were no injunctive relief fees assessed during these proceedings.

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

The Panel has assessed forum fees for each session conducted. A 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:

Three (3) Pre-hearing sessions with the Panel @ \$1,125.00/session	= \$3,375.00
Pre-hearing conferences: June 2, 2004	1 session
October 25, 2004	2 sessions

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Total Forum Fees	= \$3,375.00
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The Panel has assessed forum fees in the amount of \$1,687.50 to Claimants, jointly and severally.

The Panel has assessed forum fees in the amount of \$1,687.50 to Respondents, jointly and severally.

**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 during these proceedings.

**Fee Summary**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$1,687.50
Total Fees	= \$1,987.50
<u>Less payments</u>	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$ 562.50

Respondent MSDW is solely liable for:

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

Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$1,687.50
Total Fees	= \$1,687.50
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$1,687.50

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

**ARBITRATION PANEL**

<i>Perry Phillips</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>J. Porter McClean</i>	-	<i>Public Arbitrator</i>
<i>John N. Breazeale</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/s/\_\_\_\_\_  
Perry Phillips  
Public Arbitrator, Presiding Chairperson

12/16/2005  
Signature Date

\_\_\_\_\_/s/\_\_\_\_\_  
J. Porter McClean  
Public Arbitrator

12/16/2005  
Signature Date

\_\_\_\_\_/s/\_\_\_\_\_  
John N. Breazeale  
Non-Public Arbitrator

12/19/2005  
Signature Date

12/19/2005  
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution  
Arbitration No. 04-00496  
Stipulated Award Page 5

**ARBITRATION PANEL**

Perry Phillips -  
J. Porter McClean -  
John N. Breazeale -

*Public Arbitrator, Presiding Chairperson*  
*Public Arbitrator*  
*Non-Public Arbitrator*

**Concurring Arbitrators' Signatures**



Perry Phillips  
Public Arbitrator, Presiding Chairperson



Signature Date

\_\_\_\_\_  
J. Porter McClean  
Public Arbitrator

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

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John N. Breazeale  
Non-Public Arbitrator

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Stipulated Award Page 5

**ARBITRATION PANEL**

*Perry Phillips*

*J. Porter McClean*

*John N. Breazeale*

*Public Arbitrator, Presiding Chairperson*

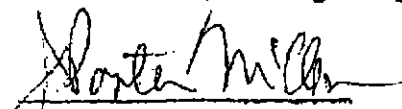
*Public Arbitrator*

*Non-Public Arbitrator*

**Concurring Arbitrators' Signatures**

Perry Phillips

Public Arbitrator, Presiding Chairperson

  
J. Porter McClean

Public Arbitrator

Signature Date

12/16/05  
Signature Date

John N. Breazeale

Non-Public Arbitrator

Signature Date

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NASD Dispute Resolution  
Arbitration No. 04-00496  
Stipulated Award Page 5

**ARBITRATION PANEL**

<i>Perry Phillips</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>J. Porter McClean</i>	-	<i>Public Arbitrator</i>
<i>John N. Breazeale</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

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Perry Phillips  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
J. Porter McClean  
Public Arbitrator

\_\_\_\_\_  
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\_\_\_\_\_  
John N. Breazeale  
Non-Public Arbitrator

12/19/05  
\_\_\_\_\_  
Signature Date

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

To: Mathew Schwartz

Re 04 - 00496

From: JOHN BREAZEAL