

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

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In the Matter of the Arbitration Between:

Jeffrey D. Harris, individually and as trustee for The Steven K. Harris Trust, Claimants v.  
Morgan Stanley Dean Witter & Co. n/k/a Morgan Stanley DW Inc. and Daniel E. Pugel,  
Respondents

Case Number: 04-02375

Hearing Site: Los Angeles, California

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Nature of the Dispute: Customers v. Member and Associated Person

**REPRESENTATION OF PARTIES**

For Claimants:

Daniel W. Dunbar, Esq.  
Law Office of Daniel W. Dunbar  
Torrance, California

For Respondents:

Michael A. Thurman, Esq.  
Stradling, Yocca, Carlson & Rauth  
Pasadena, California

**CASE INFORMATION**

Statement of Claim filed: March 30, 2004

Claimants' Joint Uniform Submission Agreement signed: April 26, 2004

Joint Statement of Answer filed: September 17, 2004

Respondent Morgan Stanley DW Inc.'s Uniform Submission Agreement signed:  
September 17, 2004

Respondent Daniel E. Pugel's Uniform Submission Agreement signed:  
September 17, 2004

### **CASE SUMMARY**

Claimants' alleged breach of contract, breach of fiduciary duty, unsuitability, fraud, and failure to supervise. Claimants' allegations involved the purchase B shares in unspecified Morgan Stanley Dean Witter & Co. mutual funds and the use of margin to liquidate the funds.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in excess of \$100,000.00, interest at 10% per annum, and costs, including attorney's fees.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety.

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

On July 8, 2004, Claimants and their counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimants shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

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

### **AWARD**

After considering the pleadings, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent Daniel E. Pugel is liable to and shall pay Claimants the sum of \$9,795.00 in compensatory damages.
- 2) Respondent Morgan Stanley DW Inc. is liable to and shall pay Claimants the sum of \$88,155.00 in compensatory damages.
- 3) Respondent Morgan Stanley DW Inc. is liable to and shall pay Claimants the sum of \$6,225.00 in costs, as reimbursement for expert witness and filing fees.
- 4) Respondent Daniel E. Pugel is liable to and shall pay Claimants interest in the amount of 10% per annum on \$9,795.00 from April 14, 2005, until the date Mr. Pugel's share of of the Award is paid to Claimant.
- 5) Respondent Morgan Stanley DW Inc. is liable to and shall pay Claimants interest in the amount of 10% per annum on \$94,380.00 from April 14, 2005, until the date Morgan Stanley DW Inc.'s share of the Award is paid to Claimant.
- 6) Except as set forth in paragraph 3, the parties shall bear their respective costs, including attorney's fees.
- 7) All other relief requested and not expressly granted is denied.

### **FEEs**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 225.00
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#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Morgan Stanley DW Inc. is a party and the following fees are assessed:

Member Surcharge	= \$1,100.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$1,700.00</u>
<b>Total Member Fees</b>	<b>= \$3,550.00</b>

#### **Adjournment Fees**

The following adjournment fees are assessed:

Adjournment of the February 8 - 11, 2005 hearing dates requested by Claimant	= Waived
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#### **Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

One (1) Pre-hearing conference session with the Panel @ \$750.00/session	= \$ 750.00
Pre-hearing conference: November 2, 2004 1 session	
Five (5) Hearing sessions @ \$750.00/session	= \$3,750.00
Hearings: April 12, 2005 2 sessions	
April 13, 2005 2 sessions	
April 14, 2005 1 session	
<b>Total Forum Fees</b>	<b>= \$4,500.00</b>

The Panel assessed the entire balance of the forum fees, in the amount of \$4,500.00, to Respondent Morgan Stanley DW, Inc.

**Fee Summary**

1. Claimants Jeffrey D. Harris and The Steven K. Harris Trust are charged with the following fees and costs:

Initial Filing Fee	= \$ 225.00
<u>Less payments</u>	<u>= \$(1,475.00)</u>
<b>Refund Due to Claimants from NASD Dispute Resolution</b>	<b>= \$(1,250.00)</b>

2. Respondent Morgan Stanley DW, Inc. is charged with the following fees and costs:

Member Fees	= \$ 3,550.00
<u>Forum Fees</u>	<u>= \$ 4,500.00</u>
Total Fees	= \$ 8,050.00
<u>Less payments</u>	<u>= \$ (5,400.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 2,650.00</b>

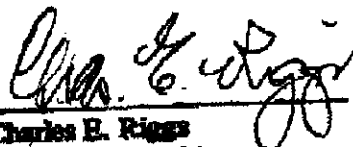
All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Charles E. Riggs  
Janice A. Salter  
Harriet A. Kottick

Public Arbitrator, Presiding Chair  
Public Arbitrator  
Non-Public Arbitrator

Concurring Arbitrators' Signatures

  
Charles E. Riggs  
Chair, Public Arbitrator

May 13, 2005  
Signature Date

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Janice A. Salter  
Public Arbitrator

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

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Harriet A. Kottick  
Non-Public Arbitrator

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Signature Date

May 13, 2005  
Date of Service

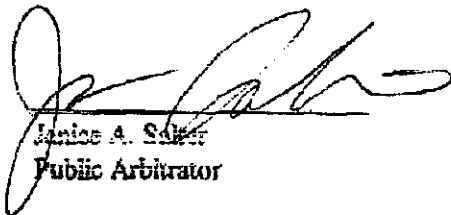
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<i>Harriet A. Kottick</i>	-	<i>Non-Public Arbitrator</i>

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Chair, Public Arbitrator

Signature Date

  
Janice A. Salter  
Public Arbitrator

5-13-05  
Signature Date

Harriet A. Kottick  
Non-Public Arbitrator

Signature Date

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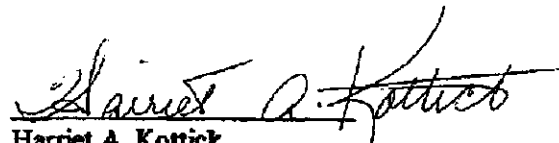
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5/13/05  
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