

**Stipulated Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:  
Harry and Helen Herman, Claimants

Case Number: - 04-03014

v.

Hearing Site: Milwaukee, Wisconsin

Morgan Stanley DW, Inc. and Pamela K. Grether,  
Respondents.

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**NATURE OF THE DISPUTE**

Customer vs. Member Firm and Associated Person

**REPRESENTATION OF PARTIES**

Harry and Helen Herman (the "Hermans"), hereinafter collectively referred to as "Claimants":  
Thomas W. Kyle, Esq. of Pitman, Kyle & Sicola, S.C., located in Watertown, Wisconsin.

Morgan Stanley DW, Inc. ("Morgan Stanley") and Pamela K. Grether, ("Grether"), hereinafter collectively referred to as "Respondents": Bruce Lewitas, Esq. of Lewitas & Associates, P.C., located in Chicago, Illinois.

**CASE INFORMATION**

Statement of Claim filed on or about: April 26, 2004

Claimants, Harry and Helen Herman, signed the Uniform Submission Agreement: April 8, 2004

Statement of Answer filed by Respondents, Morgan Stanley and Grether, on or about: July 23, 2004

Respondents, Morgan Stanley and Grether, did not submit signed Uniform Submission Agreements.

**CASE SUMMARY**

Claimants asserted the following causes of action: Securities Laws violations (Wisconsin Statutes Sec. 551.41, 551.49 and 55.59) by failing to inform of risks, inter alia, common law fraud, breach of contract, breach of fiduciary duty, recklessness, violation of NYSE Rule 405 and negligent supervision. The causes of action relate to Cisco stock.

Unless specifically admitted in its Answer, Respondents, Morgan Stanley and Grether, denied the operative allegations made in the Statement of Claim, specifically denied allegations that they recommended unsuitable investments and directed trades which were authorized by the Claimants<sup>1</sup>, and asserted the following defenses: authorization; approval and ratification of the transactions at issue; knowledge and assumption of risks associated with the transactions; barred by the doctrines of contributory and/or comparative negligence, unclean hands and laches; and that Claimants' damages, if any, were caused by market forces beyond the control

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<sup>1</sup> In correspondence dated September 23, 2005, Claimants abandoned their allegations of unauthorized trading, confirming they would not be presenting any evidence regarding unauthorized trading at hearing.

of Respondents.

### **RELIEF REQUESTED**

Claimants requested \$2,500,000.00 in actual damages; punitive damages in the amount of \$10,000,000.00; interest, costs and attorney's fees; and any other relief the Panel deems appropriate and equitable.

Respondents, Morgan Stanley and Grether, requested dismissal of Claimant's claims in their entirety and specifically requested that this matter be expunged from Ms. Grether's Central Registration Depository record.

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

Respondents, Morgan Stanley and Grether, did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but are required to submit to arbitration pursuant to the Code and, having answered the claim, are bound by the determination of the Arbitrator Panel on all issues submitted.

### **EXPUNGEMENT**

In furtherance of the parties' Settlement Agreement concerning the resolution of this matter, the parties agreed as follows:

2. **Dismissal of Action:** [C]laimants shall cause the Action to be dismissed with prejudice.

7. **Cooperation:** The Parties agree to cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this agreement, including all documents necessary to procure the expungement of this matter from the Central Registration Depository record of Ms. Grether. Such cooperation shall specifically include, but not limited to, the execution of an agreed motion for and an order of expungement to be submitted to the Arbitrators in this matter, as well as the acceptance of service of process by Claimants' counsel of Ms. Grether's petition for confirmation of the arbitration award reflecting the arbitrators' order of expungement.

### **AWARD**

After considering the pleadings and stipulation of the parties, the undersigned Panel orders as follows:

1. Any and all claims asserted by Claimants, Harry and Helen Herman, against Respondents, Morgan Stanley DW, Inc. and Pamela K. Grether, are dismissed with prejudice.
2. The parties to this action agree to and support an Order by the Panel expunging Claimants' Statement of Claim and this arbitration from the Central Registration Depository ("CRD") records of Pamela Grether.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Pamela K. Grether's registration

records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Grether must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive. Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130, the arbitration panel has made the following affirmative findings of fact: the claim, allegation, or information is false.

4. Except as otherwise specified herein, parties shall bear their own costs, including attorneys' fees.
5. Any and all relief not specifically addressed herein, including punitive damages, is denied.

### **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	= \$ 600.00
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#### **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 a party.

Member surcharge	= \$ 3,750.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,500.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

October 17-20, 2005, adjournment by both parties to mediate	= \$ 1,200.00
	(waived by NASD)

#### **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:

One (1) Pre-hearing session with Panel x \$1,200.00	= \$ 1,200.00
Pre-hearing Date: February 14, 2005 1 session	
Total Forum Fees	= \$ 1,200.00

1. The Panel has assessed 50% of the total forum fees in the amount of \$600.00 jointly and severally to Harry and Helen Herman; and

2. The Panel has assessed 50% of the total forum fees in the amount of \$600.00 jointly and severally to Respondents, Morgan Stanley DW, Inc. and Pamela K. Grether.

**Fee Summary**

Claimants, Harry and Helen Herman, are hereby jointly and severally liable for:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$ 600.00
Total Fees	= \$ 1,200.00
Less payments	= \$ 1,800.00
Refund Due from NASD Dispute Resolution	= \$ 600.00

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

Member Fees	= \$10,000.00
Less payments	= \$12,150.00
Refund Due NASD Dispute Resolution	= \$ 2,150.00

Respondents, Morgan Stanley DW, Inc. and Pamela K. Grether, are hereby jointly and severally liable for:

Forum Fees	= \$ 600.00
Less payments	= \$ 600.00
Balance Due NASD Dispute Resolution	= \$ 0.00

All balances are due to NASD Dispute Resolution.

**ARBITRATION PANEL**

Ben L. Chernov, Esq.	-	Public Arbitrator, Presiding Chairperson
Thomas Robert Rieck	-	Public Arbitrator
Linda A. Pawlisz	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/ Ben L. Chernov, Esq.  
Ben L. Chernov, Esq.  
Public Arbitrator, Presiding Chair

4/19/06  
Signature Date

/s/ Thomas R. Rieck  
Thomas Robert Rieck  
Public Arbitrator

4/19/06  
Signature Date

/s/ Linda A. Pawlisz  
Linda A. Pawlisz  
Non-Public Arbitrator

4/24/06  
Signature Date

NASD Dispute Resolution

Arbitration 04-03014

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Award Page 5 of 5

4/24/06

Date of Service (For NASD office use only)

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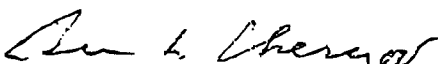
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Thomas Robert Rieck	-	Public Arbitrator
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Ben L. Chernov, Esq.  
Public Arbitrator, Presiding Chair

4-19-04  
Signature Date

Thomas Robert Rieck  
Public Arbitrator

Signature Date

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Non-Public Arbitrator

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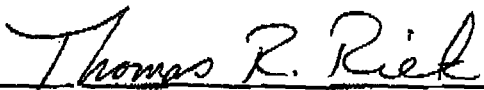
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Signature Date

  
Thomas Robert Rieck  
Public Arbitrator

4-19-06  
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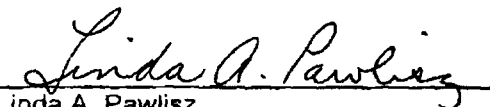
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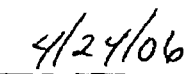
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