

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Names of Claimants

Steven M. Gitt, an individual,  
Steven M. Gitt, Trustee of Steven M. Gitt Profit Sharing, and  
Steven M. Gitt, Custodian, Gitt Childrens Custodial Acct.

vs.

Case Number: 04-03970  
Hearing Site: Phoenix, Arizona

Names of Respondents

RBC Dain Rauscher Inc.,  
Morgan Stanley DW Inc., and  
Michael A. Manfredi

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**NATURE OF THE DISPUTE**

Customers vs. Members and Associated Person

**REPRESENTATION OF PARTIES**

Steven M. Gitt, an individual; Steven M. Gitt, Trustee of Steven M. Gitt Profit Sharing; and Steven M. Gitt, Custodian, Gitt Childrens Custodial Acct. ("Claimants") were represented by Mark D. Chester, Esq., Chester & Shein, P.C., Scottsdale, Arizona.

RBC Dain Rauscher Inc. and Michael A. Manfredi, for the period of time he was employed by RBC Dain Rauscher Inc. were represented by Joel P. Hoxie, Esq. and Matthew P. Fischer, Esq., Snell & Wilmer, L.L.P., Phoenix, Arizona.

Morgan Stanley DW Inc. and Michael A. Manfredi, for the period of time he was employed by Morgan Stanley DW Inc., were represented by Christine A. Kendrick, Esq., Morgan Stanley DW Inc., San Francisco, California.

**CASE INFORMATION**

The Statement of Claim was filed on or about June 3, 2004. Claimants' Response to Respondents' Notice of Non-Opposition to Motion to Dismiss and Renewed Request for Dismissal was filed on or about July 7, 2006. The Submission Agreement of Claimant, Steven M. Gitt, an individual; Steven M. Gitt, Trustee of Steven M. Gitt Profit Sharing; and Steven M. Gitt, Custodian, Gitt Childrens Custodial Acct., was signed on or about November 28, 2003.

RBC Dain Rauscher Inc.'s Statement of Answer and Motion to Dismiss was filed on or about July 6, 2005. RBC Dain Rauscher Inc.'s Reply in Support of Motion to Dismiss was filed on or about July 25, 2006. The Submission Agreement of Respondent, RBC Dain Rauscher Inc., was signed on or about September 24, 2004.

The Answer of Respondent, Morgan Stanley DW Inc., was filed on or about July 15, 2005. The Submission Agreement of Respondent, Morgan Stanley DW Inc., was signed on or about July 20, 2005.

### **CASE SUMMARY**

Claimants asserted the following causes of action: breach of contract; breach of fiduciary duties; control person liability; negligence; negligent failure to supervise; liability as a master and/or principal; and Arizona Statutory Securities Fraud. The causes of action related to the failure to execute orders designed to realize investment gains in the account.

Unless specifically admitted in their Answers, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: ratification; waiver; estoppel; failure to mitigate; comparative fault; and statute of limitations.

### **RELIEF REQUESTED**

Claimants requested an award in the amount of:

Actual/Compensatory Damages	\$500,000.00
Interest	unspecified
Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary Relief	unspecified

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

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

Respondent, Michael A. Manfredi, did not file with the NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

In an Order dated July 24, 2006, the parties were advised that the Motion to Dismiss will be taken up at the hearing.

Prior to the commencement of the hearing, the claims asserted against Respondents, Morgan Stanley DW Inc. and Michael A. Manfredi, for the period of time he was employed by Morgan Stanley DW Inc., were dismissed by agreement.

The parties have 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, the testimony, and the evidence presented at the hearing, the Arbitration Panel has decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Respondent, RBC Dain Rauscher Inc., is liable for and shall pay to Claimants, Steven M. Gitt, an individual; Steven M. Gitt, Trustee of Steven M. Gitt Profit Sharing; and Steven M. Gitt, Custodian, Gitt Childrens Custodial Acct., the sum of \$100,000.00 (One Hundred Thousand Dollars and No Cents) in compensatory damages;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 3.) Any relief not specifically enumerated, including attorneys' fees, is hereby denied with prejudice.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial Claim filing fee	= \$ 300.00
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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 firms that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firms are RBC Dain Rauscher Inc. and Morgan Stanley DW Inc.

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

### **Adjournment Fees**

Adjournments granted during these proceedings:

November 15-17, 2005, adjournment requested by the parties.	= \$ 1,125.00
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### **Forum Fees and Assessments**

The Panel has assessed forum fees for each hearing session conducted or each decision rendered on a discovery-related motion on the papers. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: September 5, 2006	1 session
One (1) Pre-hearing session with Panel x \$1,125.00	= \$ 1,125.00
Pre-hearing conference: April 11, 2005	1 session
Five (5) Hearing sessions x \$1,125.00	= \$ 5,625.00
Hearing Dates: September 12, 2006	2 sessions
September 13, 2006	3 sessions
<b>Total Forum Fees</b>	<b>= \$ 7,200.00</b>

The Panel has assessed \$3,600.00 of the forum fees jointly and severally to Steven M. Gitt, an individual; Steven M. Gitt, Trustee of Steven M. Gitt Profit Sharing; and Steven M. Gitt, Custodian, Gitt Childrens Custodial Acct.

The Panel has assessed \$3,600.00 of the forum fees to RBC Dain Rauscher Inc.

### **FEE SUMMARY**

Claimants, Steven M. Gitt, an individual; Steven M. Gitt, Trustee of Steven M. Gitt Profit Sharing; and Steven M. Gitt, Custodian, Gitt Childrens Custodial Acct., are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$ 3,600.00</u>
Total Fees	= \$ 3,900.00
<u>Less payments</u>	<u>= \$ 1,425.00</u>
Balance Due NASD Dispute Resolution	= \$ 2,475.00

Claimant, Steven M. Gitt, is liable for:

<u>Adjournment Fee</u>	<u>= \$ 1,125.00</u>
Total Fees	= \$ 1,125.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 1,125.00

Respondent, RBC Dain Rauscher Inc., is liable for:

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	<u>= \$ 3,600.00</u>
Total Fees	= \$ 8,800.00
<u>Less payments</u>	<u>= \$ 5,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 3,600.00

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

<u>Member Fees</u>	<u>= \$ 5,200.00</u>
Total Fees	= \$ 5,200.00
<u>Less payments</u>	<u>= \$ 7,000.00</u>
Refund due Morgan Stanley DW Inc.	= \$ 1,800.00

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

**ARBITRATION PANEL**

Howard W. Shannon - Public Arbitrator, Presiding Chair  
Philip B. Whitaker, Esq. - Public Arbitrator  
Peter Joseph Kalman - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

  
Howard W. Shannon  
Public Arbitrator, Presiding Chair

  
Signature Date

Philip B. Whitaker, Esq.  
Public Arbitrator

Signature Date

Peter Joseph Kalman  
Non-Public Arbitrator

Signature Date

  
Date of Service (For NASD office use only)

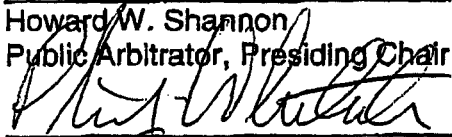
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Philip B. Whitaker, Esq. - Public Arbitrator  
Peter Joseph Kalman - Non-Public Arbitrator

**Concurring Arbitrators' Signatures:**

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Howard W. Shannon  
Public Arbitrator, Presiding Chair



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Philip B. Whitaker, Esq.  
Public Arbitrator

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Signature Date

9/22/06

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Signature Date

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Peter Joseph Kalman  
Non-Public Arbitrator

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Signature Date

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Date of Service (For NASD office use only)

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