

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

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In the Matter of the Arbitration Between:

Greg G. Grimes (Claimant) v. Morgan Stanley DW, Inc. and Barbara R. Kaplan (Respondents)

Case Number: 04-04804

Hearing Site: New York, New York

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

**REPRESENTATION OF PARTIES**

Claimant Greg G. Grimes hereinafter referred to as "Claimant": Stephen H. Weiner, Esq., Law Office of Stephen H. Weiner, New York, NY.

Respondent Morgan Stanley DW, Inc. ("MSDW"): Helene Jepson, Esq., in-house counsel for Morgan Stanley, San Francisco, CA.

Respondent Barbara R. Kaplan ("Kaplan"): David L. Becker, Esq., Davidson & Grannum LLP, Orangeburg, New York. Previously represented by Gregg M. Rzepczynski, Esq., Gregg Rzepczynski & Associates Ltd., Chicago, IL.

**CASE INFORMATION**

Statement of Claim filed on or about: July 6, 2004.

Response to the Counterclaim filed on or about: September 28, 2004.

Claimant signed the Uniform Submission Agreement: July 1, 2004.

Statement of Answer filed by Respondent MSDW on or about: September 15, 2004

Respondent MSDW signed the Uniform Submission Agreement: September 15, 2004

Statement of Answer and Counterclaim filed by Respondent Kaplan on or about: September 1, 2004

Respondent Kaplan signed the Uniform Submission Agreement: August 30, 2004

**CASE SUMMARY**

Claimant asserted the following causes of action: negligence; unauthorized trading; and, breach of fiduciary duty. The causes of action relate to various common stocks.

Unless specifically admitted in its Answer, MSDW denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in her Answer, Kaplan denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

In her Counterclaim, Kaplan asserted the following causes of action: Claimant's claims lack any damages; and, Claimant should be responsible for the costs and damages to Kaplan's good name for bringing forth this frivolous claim.

Unless specifically admitted in his Response to the Counterclaim, Claimant denied the allegations made in the Counterclaim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$136,155.32; punitive damages in the amount of \$50,000.00; interest; reasonable attorney's fees; costs incurred and, such other relief deemed necessary and proper by the Panel.

Respondent Kaplan requested compensatory damages in the amount of \$1,000,000.00; that Claimant's claim be dismissed; attorney's fees; and, all expenses relating to this matter.

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

On or about June 30, 2005, the parties notified NASD-DR that Claimant settled his claim against Respondent MSDW.

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

1. Claimant's claims are dismissed in their entirety.
2. Respondent Kaplan's Counterclaims are dismissed in their entirety.
3. 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	= \$ 300.00
Counterclaim filing fee	= \$ 375.00

### **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, Morgan Stanley DW, Inc is a party.

Member surcharge	= \$ 2,250.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$ 4,000.00</u>
Total Member Fees	= \$ 7,000.00

### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

June 1, 2, and 3, 2005, adjournment requested by all parties	= \$1,200.00
Claimant's share	= \$ 400.00
Respondent MDSW's share:	= \$ 400.00
Respondent Kaplan's share	= \$ 400.00

### **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:

One (1) Decision on discovery-related motion on the papers with single arbitrator @ \$200.00	= \$ 200.00
Claimant submitted one discovery-related motion	
One (1) Pre-hearing session with Panel @ \$1,200.00	= \$1,200.00
Pre-hearing conference: December 6, 2004 1 session	
Four (4) Hearing sessions @ \$1,200.00	= \$ 4,800.00
Hearing Dates: November 15, 2005 2 sessions	
November 16, 2005 1 session	
November 17, 2005 1 session	
Total Forum Fees	= \$6,200.00

1. The Panel has assessed \$3,100.00 of the forum fees against Claimant.
2. The Panel has assessed \$3,100.00 of the forum fees against Respondent Kaplan.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Adjournment Fee	= \$ 400.00
Forum Fees	= \$ 3,100.00
Total Fees	= \$ 3,800.00
<u>Less payments</u>	<u>= \$ 1,425.00</u>
Balance Due NASD Dispute Resolution	= \$ 2,375.00

2. Respondent MSDW is solely liable for:

Member Fees	= \$ 7,000.00
Adjournment Fee	= \$ 400.00
Total Fees	= \$ 7,400.00
<u>Less payments</u>	<u>= \$ 6,450.00</u>
Balance Due NASD Dispute Resolution	= \$ 950.00

3. Respondent Kaplan is solely liable for:

Counterclaim filing fee	= \$ 375.00
Adjournment Fee	= \$ 400.00
Forum Fees	= \$ 3,100.00
Total Fees	= \$ 3,875.00
<u>Less payments</u>	<u>= \$ 1,575.00</u>
Balance Due NASD Dispute Resolution	= \$ 2,300.00

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

Harry D. Frisch, Esq.

- Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this is which is my award.



Clarence Smith, Jr., Esq.  
Public Arbitrator, Presiding Chairperson

12/5/05

Signature Date

Robert B. Davidson, Esq.  
Public Arbitrator

Signature Date

Harry D. Frisch, Esq.  
Non-Public Arbitrator

Signature Date

**December, 7, 2005**

Date of Service (For NASD Dispute Resolution use only)

Harry D. Frisch, Esq.

Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

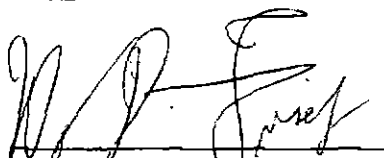
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Signature Date

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Robert B. Davidson, Esq.  
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12/2/05  
Signature Date

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Harry D. Frisch, Esq.  
Non-Public Arbitrator

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**December 7, 2005**

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