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

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In the Matter of the Arbitration Between:

Name of the Claimant

Damond Horowitz

Case Number: 04-04870

Name of the Respondent

Morgan Stanley DW, Inc.

Hearing Site: Boca Raton, Florida

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

Damond Horowitz, hereinafter referred as "Claimant", appeared pro se.

For Morgan Stanley DW, Inc., hereinafter referred to as "Respondent": Doreen Young, Esq., Morgan Stanley Law Division, Sarasota, Florida.

**CASE INFORMATION**

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

Claimant signed the Uniform Submission Agreement: March 26, 2004.

Legal Amendment to Statement of Claim filed by Claimant on or about: August 23, 2004.

Statement of Answer filed by Respondent on or about: September 1, 2004.

Respondent signed the Uniform Submission Agreement: September 1, 2004.

Motion to Amend the [Amended] Statement of Claim filed by Claimant on or about: May 10, 2005.

Response to Motion to Amend the [Amended] Statement of Claim filed by Respondent: May 26, 2005.

**CASE SUMMARY**

Claimant asserted the causes of action of failure to execute and breach of contract. The causes of action relate to Claimant's request for the purchase in his account of ten contracts of May -70 call options of EPNY.

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

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of at least \$32,000.00 and, during the evidentiary hearing, requested an unspecified amount of punitive damages.

Respondent requested that the Statement of Claim be dismissed in its entirety and that the Panel award judgment in favor of Respondent.

**OTHER ISSUES CONSIDERED AND DECIDED**

On or about June 24, 2005, the Panel issued an Order denying Claimant's Motion to Amend the [Amended] Statement of Claim.

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, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondent is liable on the claim of breach of contract and shall pay to Claimant compensatory damages in the amount of \$10,000.00.

Respondent is liable and shall reimburse Claimant the sum of \$175.00, representing the non-refundable claim filing fee paid by Claimant to NASD Dispute Resolution.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages, are denied.

**FEES**

Pursuant to the NASD Code of Arbitration Procedure (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	= \$ 175.00
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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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent is a member firm and a party.

Member Surcharge	= \$ 875.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,000.00
Total Member Fees	= \$2,625.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were incurred in this matter.

**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.

No three-day cancellation fees were incurred in this matter.

**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.

No injunctive fees were incurred in this matter.

**Forum Fees and Assessments**

Forum fees are assessed by the Panel for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less.

Two (2) Pre-hearing sessions with the Panel @ \$600.00/session	= \$1,200.00
Pre-hearing conferences:	
December 14, 2004	1 session
June 24, 2005	1 session
Two (2) Hearing sessions @ \$600.00/session	= \$1,200.00
Hearing Date:	
July 12, 2005	2 sessions
Total Forum Fees	= \$2,400.00

The Panel has assessed the total forum fees of \$2,400.00 to Respondent.

**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.

No administrative costs were incurred in this matter.

**Fee Summary**

Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 175.00
Total Fees	= \$ 175.00

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Less Payments	= \$ 175.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent is solely liable for:

Member Fees	= \$2,625.00
Forum Fees	= \$2,400.00
Total Fees	= \$5,025.00
Less Payments	= \$2,625.00
Balance Due NASD Dispute Resolution	= \$2,400.00

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

**ARBITRATION PANEL**

Lawrence S. Silver, Esq.	-	Public Arbitrator, Presiding Chairperson
Nelson J. Brous	-	Public Arbitrator
Richard D. Hanson	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/s/\_\_\_\_\_  
Lawrence S. Silver, Esq.  
Public Arbitrator, Presiding Chairperson

July 13, 2005  
Signature Date

\_\_\_\_\_/s/\_\_\_\_\_  
Nelson J. Brous  
Public Arbitrator

July 14, 2005  
Signature Date

\_\_\_\_\_/s/\_\_\_\_\_  
Richard D. Hanson  
Non-Public Arbitrator

July 14, 2005  
Signature Date

July 18, 2005  
Date of Service (For NASD Dispute Resolution office use only)

**NASD Dispute Resolution**  
**Arbitration No. 04-04870**  
**Award Page 4**

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Nelson J. Brous	-	Public Arbitrator
Richard D. Hanson	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Lawrence S. Silver, Esq.  
Public Arbitrator, Presiding Chairperson

7-13-05  
Signature Date

\_\_\_\_\_  
Nelson J. Brous  
Public Arbitrator

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

\_\_\_\_\_  
Richard D. Hanson  
Non-Public Arbitrator

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

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NASD Dispute Resolution

Arbitration No. 04-04870

Award Page 4

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Public Arbitrator, Presiding Chairperson

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Signature Date

  
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Nelson J. Brous  
Public Arbitrator

7/14/05  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Richard D. Hanson  
Non-Public Arbitrator

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Signature Date

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NASD Dispute Resolution  
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<u>Less Payments</u>	= \$ 175.00	<b>FL ARBITRATION</b>
Balance Due NASD Dispute Resolution	= \$ 0.00	

**Respondent is solely liable for:**

Member Fees	= \$2,625.00
<u>Forum Fees</u>	= \$2,400.00
Total Fees	= \$5,025.00
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Richard D. Hanson	-	Non-Public Arbitrator

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Signature Date

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Public Arbitrator

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Signature Date

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