

**Stipulated Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimants

Ronald Grossman, IRA  
and Ronald Grossman and  
Barbara Grossman, Trustees  
of the Atlas Press Retirement Trust

Case Number: 04-05156

Names of the Respondents

Morgan Stanley DW Inc. and  
Bradley Goldfarb

Hearing Site: Boston, MA

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**REPRESENTATION OF THE PARTIES**

For Ronald Grossman, IRA and Ronald and Barbara Grossman as trustees and/or beneficiaries of the Atlas Press Retirement Trust, collectively referred to as "Claimants": Scott L. Machanic, Esq., Cunningham, Machanic, Cetlin, Johnson & Harney, LLP, 220 N. Main Street, Natick, MA 01760.

For Morgan Stanley DW Inc. ("MSDW") and Bradley Goldfarb ("Goldfarb"), collectively referred to as "Respondents": Peter W. Homer, Esq. and Christopher King, Esq., Homer & Bonner, PA, 1200 Four Seasons Tower, 1441 Brickell Avenue, Miami, Florida 33131.

**CASE INFORMATION**

Claimants signed the Uniform Submission Agreement: July 6, 2004.

Statement of Claim filed on or about: July 9, 2004.

Respondent MSDW signed the Uniform Submission Agreement: September 9, 2004.

Statement of Answer and Defenses filed by Respondents on or about: September 15, 2004.

Respondent Goldfarb signed the Uniform Submission Agreement: September 29, 2004.

**CASE SUMMARY**

Claimants, who utilized independent third-party investment managers recommended by Respondents, asserted the following causes of action: (1) improper investment allocation; (2) misrepresentation; and (3) respondeat superior. The causes of action relate to unspecified securities.

Unless specifically admitted in their Answer, Respondents denied all allegations of wrongdoing set forth in the Statement of Claim, explained the detailed analytical work-up done by Respondent Goldfarb in support of third-party investment manager recommendations, how this was timely shared with and explained to Claimants, and how Claimants completed specific questionnaires listing their objectives and risk tolerances, supporting the recommendations. In opening the accounts, Claimants granted sole discretionary authority to the independent third-party investment managers; thus, neither Respondent recommended the specific investments that caused Claimants' alleged losses. Based on these facts, Respondents asserted various defenses and affirmative defenses, sought dismissal of the Statement of Claim, and requested expungement of this matter from Respondent Goldfarb's CRD records.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$260,000.00; interest in the amount of \$124,800.00; costs; attorneys' fees; and other case-related costs.

Respondents requested that all claims against them be dismissed, that Respondents be awarded their costs, that Respondents be permitted to seek their attorneys fees in a court of law, and that the Panel order expungement of this matter from Respondent Goldfarb's CRD records.

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

On May 25, 2005, Respondents' counsel conducted a voir dire of Claimants' proffered expert and moved in limine to bar her from offering any expert opinions. After extensive argument and careful consideration of the *Daubert* and *Kuhme Tire* factors described by the U.S. Supreme Court, the Panel, in its "gatekeeper" role, granted the motion in limine finding that the proffered witness did not have the requisites to offer expert opinion testimony on the identified topics.

On May 26, 2005, after opening statements and two days of introduction of documentary evidence and testimony from Respondent Goldfarb and Claimants' putative expert, Claimants agreed to withdraw and dismiss with prejudice all their claims against Respondents provided each party bear its respective costs and attorney's fees except that Respondent Morgan Stanley DW Inc. would bear all NASD forum fees associated with this matter. Under this arrangement, Respondents would not pay Claimants any monies for the resolution of this matter. The parties also agreed that Respondent Goldfarb could request that the Panel consider expungement under the recently promulgated changes to NASD Rule 2130. These terms are set forth in the document attached hereto, and as read into the record by the Chairperson.

The parties finally agreed that this Award may be executed in counterpart copies.

### **AWARD**

After considering the extensive written submissions of the parties, two days of testimonial and

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

1. Claimants' claims for relief predicated on the recommendation of independent third-party investment managers and those managers' investment decisions are dismissed with prejudice, with each party to bear its respective costs and attorneys' fees. All forum fees are to be assessed against Respondent Morgan Stanley DW, Inc.
2. Any and all claims for relief not specifically addressed herein are denied with prejudice based upon Claimants' withdrawal of all alleged claims.
3. The Panel specifically finds that, based upon the evidence adduced at the hearing, Claimants' withdrawal of claims with prejudice, and the additional on-the-record proffer and argument made by the parties' counsel, that the claims asserted against Respondent Bradley Goldfarb are "clearly erroneous" both factually and legally within the meaning of NASD Rule 2130. The Panel therefore recommends the expungement of all references to the above-captioned arbitration from Goldfarb's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Member 99-09 and 99-54, Goldfarb must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
4. Respondent MSDW shall bear the responsibility of the NASD arbitration forum fees and shall bear any NASD arbitration forum fees associated with the expungement.

#### 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 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 firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, because Morgan Stanley DW, Inc. is a party, the following are assessed:

Member Surcharge	= \$ 1,700.00
Pre-hearing process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 2,750.00</u>
Total Member Fees	= \$ 5,200.00

##### 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:

May 27, 2005, settled by Respondents = \$ 300.00

#### **Forum Fees and Assessments**

The Arbitrator/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. Forum fees associated with these proceedings are:

(1) Pre-hearing conference session with a single arbitrator @ \$ 450.00/session = \$ 450.00

Pre-hearing conference: February 8, 2005 1 session

(1) Pre-hearing conference session with the Panel @ \$1,125.00/session = \$ 1,125.00

Pre-hearing conference: December 20, 2004 1 session

(5) Hearing sessions @ \$1,125.00/session = \$ 5,625.00

Hearings: May 24, 2005 2 sessions

May 25, 2005 2 sessions

May 26, 2005 1 session

Total Forum Fees = \$ 7,200.00

1. The Panel has assessed \$7,200.00 of the forum fees against Respondent Morgan Stanley DW, Inc.

#### **Fee Summary**

1. Claimants are solely liable for:

Initial Filing Fee = \$ 300.00

Total Fees = \$ 300.00

Less payments = \$ 1,425.00

Refund Due Claimants from NASD Dispute Resolution = \$ 1,125.00

2. Respondent MSDW is solely liable for:

Member Fees = \$ 5,200.00

Three-Day Cancellation Fee = \$ 300.00

Forum Fees = \$ 7,200.00

Total Fees = \$12,700.00

Less payments = \$ 5,200.00

Balance Due NASD Dispute Resolution = \$ 7,500.00

All balances are due and payable to NASD Dispute Resolution

Parties' Signatures



Ronald Grossman  
Claimant

7/1/05  
Signature Date



Atlas Press Retirement Trust  
Claimant

7/1/05  
Signature Date

 FOR

Morgan Stanley, DW, Inc.  
Respondent

7/5/05  
Signature Date

 FOR

Bradley Goldfarb  
Respondent

7/5/05  
Signature Date

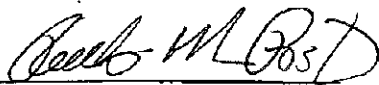
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**ARBITRATION PANEL**

Ruth-Ellen Post	-	Public Arbitrator, Presiding Chairperson
Sylvia E. Green	-	Public Arbitrator
Jack A. Marshall	-	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 instrument which is my award.



Ruth-Ellen Post  
Public Arbitrator, Presiding Chairperson

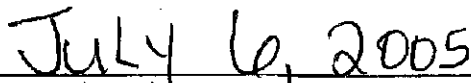
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Signature Date

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Sylvia E. Green  
Public Arbitrator

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Signature Date

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Jack A. Marshall  
Non-Public Arbitrator

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



Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

Ruth-Ellen Post	-	Public Arbitrator, Presiding Chairperson
Sylvia E. Green	-	Public Arbitrator
Jack A. Marshall	-	Non-Public Arbitrator

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Public Arbitrator, Presiding Chairperson

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

Sylvia E. Green  
Sylvia E. Green  
Public Arbitrator

6/8/05  
Signature Date

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Jack A. Marshall  
Non-Public Arbitrator

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

July 6, 2005  
Date of Service (For NASD Dispute Resolution use only)

NASD REGULATION

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ARBITRATION PANEL

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Public Arbitrator, Presiding Chairperson

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Signature Date

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Sylvia E. Green  
Public Arbitrator

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Signature Date

  
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