

**Stipulated Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Names of the Claimants

Morton Goldberg  
Elaine Goldberg  
Morton Goldberg TTEE  
Morton H. Goldberg Rev Trust U/A  
DTD 12/03/99

Case Number: 04-05584

Names of the Respondents

Morgan Stanley Dean Witter, Inc.  
Kenneth J. Venable  
Robert DiGiacomo

Hearing Site: Boca Raton, Florida

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

**REPRESENTATION OF PARTIES**

For Morton Goldberg, Elaine Goldberg and Morton H. Goldberg Rev Trust U/A DTD 12/03/99, hereinafter collectively referred to as "Claimants": Darren C. Blum, Esq., Blum & Silver, LLP, Coral Springs, Florida.

For Morgan Stanley Dean Witter, Inc. ("MSDW"), Kenneth J. Venable ("Venable") and Robert DiGiacomo ("DiGiacomo"), hereinafter collectively referred to as "Respondents": William D. Briendel, Esq., Greenberg Traurig, New York, New York.

**CASE INFORMATION**

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

Claimants signed Uniform Submission Agreements on: July 28, 2004.

Statement of Answer filed by Respondents on or about: October 22, 2004.

Respondents MSDW, Venable and DiGiacomo did not file executed Uniform Submission Agreements.

**CASE SUMMARY**

Claimants asserted the following causes of action: 1) violations of industry rules including, but not limited to, the NYSE's "Know Your Customer" standard (Rule 405) and the NASD's customer suitability standard (Rule 2310); 2) breach of contract; 3) breach of fiduciary duty; 4) common law fraud; 5) negligence; and, 6) negligent hiring, retention and supervision of Respondent MSDW's employees. The causes of action relate to Claimants' investment in equity mutual funds including, but not limited to, MSDW American Opportunities Fund, MSDW European Growth Fund, MSDW Aggressive Equity Fund, Van Kampen Growth & Income Fund, Putnam Equity Income Fund and AIM High Yield Fund.

Unless specifically admitted in their Answer, Respondents denied the allegations of wrongdoing set forth in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested: 1) compensatory damages in the amount of \$500,000.00; 2) interest at the legal rate from the date of purchase or reasonable market return; 3) rescission; 4) unspecified punitive damages; 5) costs of the proceeding; and, 6) such other relief as is just and proper.

Respondents requested that the Panel: 1) dismiss the Statement of Claim in its entirety; 2) award costs and fees; and, 3) direct expungement of all references to this matter from Respondent DiGiacomo's registration records maintained by the NASD Central Registration Depository ("CRD").

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

Respondents MSDW, Venable and DiGiacomo did not file with NASD Dispute Resolution properly executed uniform submission agreements but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure ("the Code") and, having answered the claim, are bound by the determination of the Panel on all issues submitted.

On or about May 3, 2006, Claimants filed with NASD a notice of dismissal, with prejudice, of their claims against Respondents Venable and DiGiacomo.

On or about June 21, 2006, the parties advised NASD that they had settled this matter.

On or about September 13, 2006, the Panel conducted a telephonic hearing with the parties on Respondent DiGiacomo's request for expungement. Thereafter, the Panel issued an Order that required Claimants to submit a signed affidavit stating that Respondent DiGiacomo was not involved in the alleged investment related sales practice violation, forgery, theft, misappropriation or conversion of funds. On or about October 3, 2006, Claimants complied with the Panel's Order. Thereafter, the Panel issued an Order granting Respondent DiGiacomo's request for expungement.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Stipulated Award may be entered.

### **AWARD**

The parties entered into an agreement to present to the Panel a Stipulated Award.

Now, in lieu of a hearing and upon motion of both parties for an entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent DiGiacomo's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notice to Members 04-16, Respondent DiGiacomo must obtain confirmation from a court of competent jurisdiction before the NASD 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 of the NASD Code of Arbitration Procedure, the Panel has made the following affirmative findings of fact:

Respondent Digiacomio was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

Any and all claims for relief not specifically addressed herein, including Claimants' request for punitive damages, are 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
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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(s) at the time of the events giving rise to the dispute. In this matter, Respondent MSDW is a party and a member firm.

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

#### **Adjournment Fees**

The following adjournment fees are assessed:

July 25, 2006, adjournment requested by Respondents. = \$1,500.00

The Panel has assessed the total adjournment fee of \$1,125.00 to Respondents, jointly and severally.

### **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:

The Panel has assessed a three-day cancellation fee in the amount of \$300.00 to Respondents, jointly and severally.

### **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. Forum fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conference: December 21, 2005 1 session	

One (1) Pre-hearing session with the Panel @ \$1,125.00/session	= \$1,125.00
Pre-hearing conference: December 15, 2004 1 session	

One (1) Hearing sessions @ \$1,125.00/session	= \$1,125.00
Hearing(s): September 13, 2006 1 session	

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Total Forum Fees	= \$2,700.00
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The Panel has assessed \$1,350.00 of the forum fees to Claimants, jointly and severally.

The Panel has assessed \$1,350.00 of the forum fees to Respondents, jointly and severally.

### **Administrative Costs**

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

**Fee Summary**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$1,350.00
Total Fees	= \$1,650.00
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$ 225.00

Respondent MSDW is solely liable for:

Member Fees	= \$5,200.00
Total Fees	= \$5,200.00
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

Adjournment Fee	= \$1,500.00
Three-day Cancellation Fee	= \$ 300.00
Forum Fees	= \$1,350.00
Total Fees	= \$3,150.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$3,150.00

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

**ARBITRATION PANEL**

Peter A. Cartwright, Esq.	-	Public Arbitrator, Presiding Chairperson
William R. Alheim, Esq.	-	Public Arbitrator
E. Stephen Walsh, 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 instrument which is my award.

/s/

Peter A. Cartwright, Esq.  
Public Arbitrator, Presiding Chair

October 10, 2006  
Signature Date

/s/  
William R. Alheim, Esq.  
Public Arbitrator

October 10, 2006  
Signature Date

/s/  
E. Stephen Walsh, Esq.  
Non-Public Arbitrator

October 10, 2006  
Signature Date

October 10, 2006  
Date of Service (For NASD Dispute Resolution office use only)

Oct. 10. 2006 9:39AM

No. 3185 P. 6/7

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Arbitration No. 04-05584  
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**Fee Summary**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$1,350.00
Total Fees	= \$1,650.00
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$ 225.00

Respondent MSDW is solely liable for:

Member Fees	= \$5,200.00
Total Fees	= \$5,200.00
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

Adjournment Fee	= \$1,500.00
Three-day Cancellation Fee	= \$ 300.00
Forum Fees	= \$1,350.00
Total Fees	= \$3,150.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$3,150.00


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

**ARBITRATION PANEL**

Peter A. Cartwright, Esq.	-	Public Arbitrator, Presiding Chairperson
William R. Alheim, Esq.	-	Public Arbitrator
E. Stephen Walsh, Esq.	-	Non-Public Arbitrator

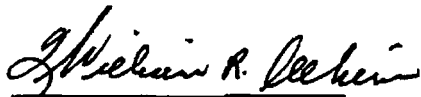
**Concurring Arbitrators' Signatures**

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 instrument which is my award.

  
Peter A. Cartwright, Esq.  
Public Arbitrator, Presiding Chair

  
Signature Date

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William R. Alheim, Esq.  
Public Arbitrator

10-10-06

Signature Date

E. Stephen Walsh, Esq.  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)



William R. Alheim, Esq.  
Public Arbitrator

Signature Date

E. Stephen Walsh  
E. Stephen Walsh, Esq.  
Non-Public Arbitrator

10/10/06  
Signature Date

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