

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

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In the Matter of the Arbitration Between

Claimant

Stanley L. Drassler

and

Case Number: 04-05591

Hearing Site: Chicago, Illinois

Respondent

Morgan Stanley Dean Witter, Inc.

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**NATURE OF DISPUTE**

Customer v. Member

**REPRESENTATION OF PARTIES**

Stanley L. Drassler ("Claimant") was represented by Liam O'Brien, Esq. of Liam O'Brian & Associates, located in New York, New York.

Morgan Stanley Dean Witter, Inc. ("Respondent"), or ("Morgan Stanley"), was represented by Harrison Kaufman, Esq., Morgan Stanley DW Inc., located in Purchase, New York.

**CASE INFORMATION**

The Statement of Claim was filed on or about August 6, 2004. Claimant signed the Uniform Submission Agreement on July 24, 2004.

The Statement of Answer was filed by Respondent on or about October 14, 2004. Respondent signed the Uniform Submission Agreement on October 13, 2004.

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of contract; breach of fiduciary duty; failure to supervise; negligence; misrepresentation; and fraud.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: The Statement of Claim fails to state a cause of action upon which relief may be granted; Morgan Stanley did not act with any intent to defraud Claimant or with any willful disregard for him; Morgan Stanley did not misrepresent or omit any material facts; all the transactions effected on claimant's accounts were authorized; the actions or inactions of Claimant, not

Morgan Stanley caused the alleged damages; Claimant failed to mitigate his damages; Claimant ratified the transactions at issue; Claimant is comparatively and/or contributorily negligent; Morgan Stanley had supervisory procedures which it reasonably implemented and followed; Claimant's accounts were non-discretionary accounts; Claimant assumed the risks of the transactions.

Claimant's claims are related to Respondent's recommendation that Claimant purchase shares of Agre IPO and Lucent Technologies.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$60,000.00 in compensatory damages.

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**

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing and the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Respondent Morgan Stanley Dean Witter, Inc. shall pay to Claimant Stanley Drassler \$25,000.00 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 punitive damages and attorney fees, is hereby denied with prejudice.

### **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 = \$250.00

#### **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 firm is Morgan Stanley.

Member surcharge = \$ 1,100.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 1,700.00

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

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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. Fees associated with these proceedings are:

One (1) Pre-hearing sessions with a single arbitrator x \$ 450.00 = \$ 450.00

Pre-hearing conference: June 30, 2005 1 session

Two (2) Pre-hearing session with Panel x \$ 750.00 = \$1,500.00

Pre-hearing conference: January 7, 2005 1 session

July 15, 2005 1 session

Four (4) Hearing sessions x 750.00 = \$ 3,000.00

Hearing Dates: August 2, 2005 2 sessions

August 3, 2005 2 sessions

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Total Forum Fees = \$4,950.00

### **Fee Summary**

Claimant is solely liable for for:

Initial Filing Fee = \$ 225.00

Forum Fees = \$ 375.00

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Total Fees = \$ 600.00

<u>Less payments</u>	= \$ 1,000.00
Balance Due NASD Dispute Resolution	= \$ 400.00

Respondent Morgan Stanley is liable for:

Member Fees	= \$3,550.00
<u>Forum Fees</u>	= \$4,575.00
Total Fees	= \$8,125.00
<u>Less Payments</u>	= \$3,550.00

Balance Due NASD Dispute Resolution	= \$4,575.00
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All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Joseph V. Simeri, J.D.- Public Arbitrator, Presiding Chair  
Donald Dreyfus- Public Arbitrator  
David J. Dahl - Non-Public Arbitrator

Concurring Arbitrators:

\_\_\_\_\_  
Joseph V. Simeri, J.D.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Donald Dreyfus  
Public Arbitrator

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

\_\_\_\_\_  
David J. Dahl  
Non-Public Arbitrator

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

September 27, 2005  
Date of Service (For NASD office use only)

NASD Dispute Resolution  
Arbitration No. 04-05501  
Award Page 4 of 4

Less payments = \$ 1,000.00  
Balance Due NASD Dispute Resolution = \$ 400.00

Respondent Morgan Stanley is liable for:

Member Fees = \$3,550.00  
Forum Fees = \$4,575.00  
Total Fees = \$8,125.00  
Less Payments = \$3,550.00  
Balance Due NASD Dispute Resolution = \$4,575.00

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Donald Drayfus - Public Arbitrator  
David J. Dahl - Non-Public Arbitrator

Concurring Arbitrators:

  
\_\_\_\_\_  
Joseph V. Simeri, J.D.  
Public Arbitrator, Presiding Chair

9.27.05  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Donald Drayfus  
Public Arbitrator

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

\_\_\_\_\_  
David J. Dahl  
Non-Public Arbitrator

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

\_\_\_\_\_  
Date of Service (For NASD office use only)

<u>Less payments</u>	= \$ 1,000.00
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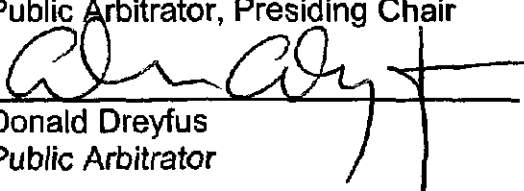
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Joseph V. Simeri, J.D.  
Public Arbitrator, Presiding Chair

  
\_\_\_\_\_  
Donald Dreyfus  
Public Arbitrator

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

SEPT. 20, 2005  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
David J. Dahl  
Non-Public Arbitrator

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

\_\_\_\_\_  
Date of Service (For NASD office use only)

NASD Dispute Resolution  
Arbitration No. 04-05581  
Award Page 4 of 4

Less payments = \$ 1,000.00  
Balance Due NASD Dispute Resolution = \$ 400.00

Respondent Morgan Stanley is liable for:

Member Fees = \$3,550.00

Forum Fees = \$4,575.00

Total Fees = \$8,125.00

Less Payments = \$3,550.00

Balance Due NASD Dispute Resolution = \$4,575.00

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

**ARBITRATION PANEL**

Joseph V. Simerl, J.D. - Public Arbitrator, Presiding Chair

Donald Dreyfus - Public Arbitrator

David J. Dahl - Non-Public Arbitrator

Concurring Arbitrators:

Joseph V. Simerl, J.D.  
Public Arbitrator, Presiding Chair

Signature Date

Donald Dreyfus  
Public Arbitrator

Signature Date

  
David J. Dahl  
Non-Public Arbitrator

9/12/05  
Signature Date

Date of Service (For NASD office use only)