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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Joseph F. McCormick

Case Number: 04-05753

Names of the Respondents  
Morgan Stanley & Co., f/k/a Dean Witter Investments, Inc.  
David Bolding

Hearing Site: Orlando, Florida

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

**REPRESENTATION OF PARTIES**

For Joseph F. McCormick, hereinafter referred to as "Claimant": Richard G. Rumrell, Esq., Rumrell, Costabel, Warrington and Brock, LLP, St. Augustine, Florida.

For Morgan Stanley & Co., f/k/a Dean Witter Investments, Inc. ("Morgan Stanley") and David Bolding ("Bolding"), hereinafter referred to as "Respondents": Michael P. Manning, Esq., Greenberg Traurig, New York, New York.

**CASE INFORMATION**

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

Claimant signed the Uniform Submission Agreement: July 23, 2004.

Motion for a More Definite Statement and Statement of Answer filed by Respondents on or about: October 22, 2004.

Respondents did not file signed the Uniform Submission Agreements.

Unopposed Motion to for Leave to File an Amended Statement of Claim and proposed Amended Statement of Claim filed by Claimant on or about: November 21, 2005.

**CASE SUMMARY**

Claimant asserted the following causes of action: 1) violation of Florida Statutes; Section 517.301 *et seq.*; 2) breach of fiduciary duty; 3) churning; 4) unauthorized trading; 5) unsuitability; 6) failure to supervise; and, 7) breach of contract. The causes of action relate to the purchase of various technology and internet stocks in Claimant's account.

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

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$265,000.00, punitive damages, pre and post-judgment interest at the statutory rate, attorneys' fees and costs.

Respondents requested that the Statement of Claim be dismissed in its entirety, an award of costs and attorneys' fees and such other and further relief as this Panel deemed appropriate. In addition, Respondents' requested that the Panel enter an order expunging this matter from the NASD Central Registration Depository (the "CRD") record of Respondent Bolding.

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

Respondents did not file with NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

On or about December 19, 2005, the Panel issued an Order that granted Claimant's Unopposed Motion to for Leave to File an Amended Statement of Claim

At the conclusion of the evidentiary hearings for this matter, Respondents made an ore tenus Motion to Dismiss. The Panel denied the motion.

The parties have agreed that the Award in this matter may be entered in counterpart copies or that a signed handwritten 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:

Respondents are found jointly and severally liable for violation of Florida Statutes, Section 517.301 *et seq.*, unauthorized trading, unsuitability and failure to supervise and shall pay to Claimant compensatory damages in the amount of \$241,000.00, plus interest at the state of Florida statutory rate from the date of service of this Award until the date of payment.

Respondents are found jointly and severally liable for violation of Florida Statutes, Section 517.301 *et seq.* and shall pay to Claimant attorneys' fees in an amount to be determined by a court of competent jurisdiction.

Respondent Bolding's request for expungement of his NASD CRD record, is denied.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages and Respondents' request for attorneys' fees, 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

### **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, Respondent Morgan Stanley is a party to this dispute and was a member of NASD at the time the following fees were 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

### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

The following adjournment fees are assessed:

June 19 – 21, 2006 – joint request for adjournment = \$1,125.00

The Panel has assessed \$562.50 of the adjournment fee to Claimant.

The Panel has assessed \$562.50 of the adjournment fee jointly and severally to Respondents.

### **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 cancellation fees were assessed 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 relief fees were incurred during this proceeding.

**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:

Seven (7) Hearing sessions with the Panel @ \$1,125.00	= \$7,875.00
Hearing Dates:           October 10, 2006   2 sessions	
October 11, 2006   3 sessions	
October 12, 2006   2 sessions	

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Total Forum Fees	= \$7,875.00
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The Panel has assessed the total forum fees of \$7,875.00 jointly and severally to Respondents.

**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 during this proceeding.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Adjournment Fee</u>	= \$ 562.50
Total Fees	= \$ 862.50
<u>Less payments</u>	= \$ 862.50
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent MSDW is solely liable for:

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

Respondents are jointly and severally liable for:

Adjournment Fee	= \$ 562.50
<u>Forum Fees</u>	= \$ 7,875.00
Total Fees	= \$ 8,437.50
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 8,437.50

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

**ARBITRATION PANEL**

<i>Thomas K. Goldie</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Charles Tindell, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Gustavus L. Pearthree</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

/s/  
Thomas K. Goldie  
Public Arbitrator, Presiding Chairperson

10/16/06  
Signature Date

/s/  
Charles Tindell, Esq.  
Public Arbitrator

10/13/06  
Signature Date

/s/  
Gustavus L. Pearthree  
Non-Public Arbitrator

10/13/06  
Signature Date

10/16/06  
Date of Service (For NASD Dispute Resolution office use only)

Oct 16, 2006 9:13AM

No. 3288 P. 6

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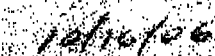
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Thomas K. Goldie  
Charles Tindell, Esq.  
Gustavus L. Pearthree

Public Arbitrator, Presiding Chairperson  
Public Arbitrator  
Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Thomas K. Goldie  
Public Arbitrator, Presiding Chairperson



Signature Date

Charles Tindell, Esq.  
Public Arbitrator

Signature Date

Gustavus L. Pearthree  
Non-Public Arbitrator

Signature Date

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

Oct. 13 2006 2:59PM

No. 3273 P. 6/6

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Arbitration No. 04-05753  
Award Page 5


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Charles Tindell, Esq.	-	Public Arbitrator
Gustavus L. Pearthree	-	Non-Public Arbitrator

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Public Arbitrator

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Signature Date

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