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

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In the Matter of the Arbitration Between:

Name of the Claimant

Morton I. Zeff

Case Number: 04-05769

Names of the Respondents

Morgan Stanley DW, Inc.

Marc Tamse

Hearing Site: Boca Raton, Florida

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

**REPRESENTATION OF PARTIES**

For Morton I. Zeff, hereinafter referred to as "Claimant": Randall Place, Esq. and Scott Silver, Esq., Blum and Silver, LLP, Coral Springs, Florida.

For Morgan Stanley DW, Inc. ("MSDW") and Marc Tamse ("Tamse"), hereinafter collectively referred to as "Respondents": Doreen S. Young, Esq., Morgan Stanley DW, Inc. Legal Division, Tampa, Florida and David Oppenheim, Esq., Morgan Stanley DW, Inc. Legal Division, Pensacola, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: August 13, 2004.

Claimant signed the Uniform Submission Agreement: August 2, 2004.

Answer and Defenses filed by Respondents on or about: October 6, 2004.

Respondent MSDW signed the Uniform Submission Agreement: October 5, 2004.

Respondent Tamse signed the Uniform Submission Agreement: October 19, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: 1) violation of NYSE Rule 405, "Know Your Customer"; 2) violation of NASD Rule 2310; 3) breach of contract; 4) breach of fiduciary duty; 5) common law fraud; 6) negligence; and 7) negligent hiring, retention and supervision. The causes of action relate to Claimant's investments in, including but not limited to, Morgan Stanley High Yield Mutual Funds.

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: 1) compensatory damages in the amount of \$100,000.00; 2) interest at the legal rate

from the date of purchase or reasonable market return; 3) rescission; 4) punitive damages; 5) costs; and 6) such other relief as the undersigned arbitrators (the "Panel") deemed just and proper.

Respondents requested: 1) that all claims against them be dismissed; 2) that Respondents be awarded their costs; and 3) that all references to the above captioned arbitration proceeding be expunged from the NASD Central Registration Depository ("CRD") records of Respondent Tamse.

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

At the evidentiary hearing, the parties informed the Panel that the Claimant had settled his claims against Respondents. Additionally, the parties agreed and the Panel approved the entry of a Stipulated Award that requests the expungement of the NASD CRD records of Respondent Tamse.

On or about December 5, 2005, the parties filed a proposed Stipulated Award with a request for expungement of the NASD CRD record of Respondent Tamse.

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

### **AWARD**

After considering the pleadings and the parties' proposed Stipulated Award, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims for relief asserted by Claimant, or that could have been asserted by Claimant, in this matter, including claims under Chapter 517 of the Florida Statutes, are dismissed with prejudice.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Tamse's registration records maintained by NASD CRD, with the understanding that pursuant to NASD Notices to Members 04-16, Respondent Tamse must obtain confirmation from a court of competent jurisdiction before 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, the Panel has made the following affirmative findings of fact:

This recommendation is based upon several undisputed facts, i.e., that Tamse did not sell any securities to the Claimant, that Tamse did not recommend that the Claimant purchase any specific security, that Tamse did not attend or host a seminar on the MSDW High Yield Fund and Tamse's recommendation that Claimant sell his shares of the MSDW High Yield Fund was not unsuitable, negligent or otherwise actionable. Respondent Tamse is entitled to an expungement of all references to this matter from his CRD on the grounds that (1) the allegations against him and the claims, allegations or information

with regard to Respondent Tamse are factually impossible or clearly erroneous; (2) Respondent Tamse was not involved in the alleged investment-related sales practice violation; and (3) the claims, allegations or information with regard to Respondent Tamse are false.

3. The parties shall bear their own attorneys' fees and costs, except as set forth below with regard to arbitration/forum fees.
4. 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	= \$ 225.00
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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 MSDW is a party and a member firm.

Member surcharge	= \$1,100.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$1,700.00</u>
Total Member Fees	= \$3,550.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournment fees assessed during these proceedings.

#### **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 waived the three-day cancellation fees in the amount of \$300.00.

#### **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.

There were no injunctive relief fees assessed during these proceedings.

**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:

One (1) Pre-hearing session with a single Arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conference: September 22, 2005 1 session	
One (1) Pre-hearing session with the Panel @ \$750.00/session	= \$ 750.00
Pre-hearing conference: December 16, 2004 1 session	
Four (4) Hearing sessions with the Panel @ \$750.00/session	= \$3,000.00
Hearing Dates: November 8, 2005 3 sessions	
November 9, 2005 1 session	
Total Forum Fees	= \$4,200.00

The Panel has assessed forum fees in the amount of \$4,200.00 solely to Claimant.

**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.

There were no administrative costs incurred during these proceedings.

**Fee Summary**

Claimant is solely liable for:

Forum Fees	= \$4,200.00
Initial Filing Fee	= \$ 225.00
Total Fees	= \$4,425.00
Less payments	= \$ 975.00
Balance Due NASD Dispute Resolution	= \$3,450.00

Respondent MSDW is solely liable for:

Member Fees	= \$3,550.00
Total Fees	= \$3,550.00
Less payments	= \$3,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

**ARBITRATION PANEL**

<i>S. Harvey Ziegler, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Mark C. Perry, Esq.</i>	-	<i>Public Arbitrator</i>
<i>John H. Claudy</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/s/\_\_\_\_\_  
S. Harvey Ziegler, Esq.  
Public Arbitrator, Presiding Chairperson

12/14/05  
Signature Date

\_\_\_\_\_/s/\_\_\_\_\_  
Mark C. Perry, Esq.  
Public Arbitrator

12/14/05  
Signature Date

\_\_\_\_\_/s/\_\_\_\_\_  
John H. Claudy  
Non-Public Arbitrator

12/13/05  
Signature Date

12/14/05  
Date of Service (For NASD Dispute Resolution office use only)

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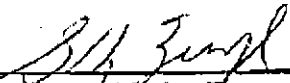
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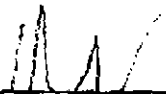
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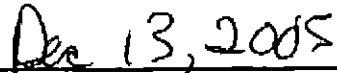
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