

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

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In the Matter of the Arbitration Between:

Kenneth Gregoire and Dorothy Gregoire, Kenneth Gregoire, IRA and Dorothy Gregoire, IRA (Claimants) vs. Morgan Stanley DW Inc., and James A. McMahon III (Respondents)

Case Number: 04-06425

Hearing Site: Boston, Massachusetts

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

**REPRESENTATION OF PARTIES**

Claimants Kenneth Gregoire and Dorothy Gregoire ("K & D Gregoire"), Kenneth Gregoire, IRA ("K. Gregoire, IRA") and Dorothy Gregoire IRA ("D. Gregoire IRA") hereinafter collectively referred to as "Claimants": Sigmund D. Schutz, Esq., Preti Flaherty Beliveau Pachios & Haley, Portland, Maine.

Respondents Morgan Stanley DW Inc. ("Morgan Stanley") and James A. McMahon III ("McMahon") hereinafter collectively referred to as "Respondents": David A. Travin, Esq., Greenberg Traurig, LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: September 8, 2004.

K & D Gregoire signed the Uniform Submission Agreement: September 7, 2004.

K. Gregoire, IRA signed the Uniform Submission Agreement: September 7, 2004.

D. Gregoire, IRA signed the Uniform Submission Agreement: September 7, 2004.

Joint Statement of Answer filed by Respondents on or about: November 12, 2004.

Morgan Stanley did not sign the Uniform Submission Agreement.

McMahon did not sign the Uniform Submission Agreement.

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of contract; failure to supervise; negligence; breach of fiduciary duty; misrepresentation; non-disclosure; omission of facts; suitability, and unauthorized trading.

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

**RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$1,000,000.00,

\$500,000.00 in punitive damages; arbitration costs and expenses; attorneys' fees and pre-arbitration and post-arbitration interest.

Respondents requested that Claimants' claims be dismissed in their entirety; costs; expungement, and such other relief that the arbitration Panel deems fair and equitable.

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

Respondent Merrill Lynch and McMahon did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to 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.

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

### **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:

1. Respondents are jointly and severally liable and shall pay to the Claimants \$419,000.00 in compensatory damages.
2. Any and all relief not specifically addressed herein, including punitive damages, is 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	= \$ 500.00
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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 persons at the time of the events giving rise to the dispute. Accordingly, Morgan Stanley DW, Inc., is a party.

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,000.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

January 10-13, 2006 adjournment requested by the Respondents	= \$1,200.00
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December 13, 14, 15, 16, 2005 requested by all parties = Waived

**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:

December 13, 14, 15, 16, 2005, adjournment by all parties	= \$ 300.00
Claimants' share	= \$ 150.00
Morgan Stanley's share	= \$ 75.00
McMahon's share	= \$ 75.00

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. 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:

Two (2) Pre-hearing sessions with Panel @ \$1,200.00 per session	= \$2,400.00
Pre-hearing conferences: February 7, 2005	1 session
January 26, 2006	1 session

Six (6) Hearing sessions @ \$1,200.00 per session	= \$7,200.00
Hearing Dates: April 25, 2006	3 sessions
April 26, 2006	3 sessions

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Total Forum Fees	= \$9,600.00
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1. The Panel has assessed \$3,200.00 of the forum fees jointly and severally against the Claimants.
2. The Panel has assessed \$6,400.00 of the forum fees against Morgan Stanley.

**Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
Three-Day Cancellation Fee	= \$ 150.00
Forum Fees	= \$ 3,200.00
Total Fees	= \$ 3,850.00
Less payments	= \$ 1,700.00
Balance Due NASD Dispute Resolution	= \$ 2,150.00

2. Respondent Morgan Stanley is solely liable for:

Member Fees	= \$ 8,550.00
Three-Day Cancellation Fee	= \$ 75.00
Forum Fees	= \$ 6,400.00
Total Fees	= \$15,025.00
Less payments	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 6,475.00

3. Respondent McMahon is solely liable for:

Three-Day Cancellation Fee	= \$	75.00
Total Fees	= \$	75.00
Less payments	= \$	0.00
Balance Due NASD Dispute Resolution	= \$	75.00

4. Respondents are jointly and severally liable for:

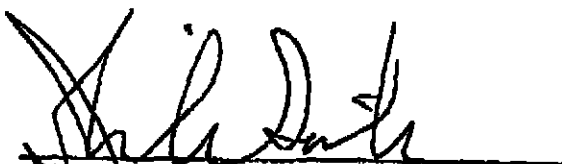
Postponement Fee	= \$	1,200.00
Total Fees	= \$	1,200.00
Less payments	= \$	0.00
Balance Due NASD Dispute Resolution	= \$	1,200.00

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


**ARBITRATION PANEL**

John A. Seiler	-	Public Arbitrator, Presiding Chairperson
William Norton	-	Public Arbitrator
Francis A. Sullivan	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
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John A. Seiler  
Public Arbitrator, Presiding Chairperson

5/15/06  
Signature Date

  
\_\_\_\_\_  
William Norton  
Public Arbitrator

5/13/06  
Signature Date

  
\_\_\_\_\_  
Francis A. Sullivan  
Non-Public Arbitrator

5/12/2006  
Signature Date

May 15, 2006  
Date of Service (For NASD Dispute Resolution use only)