

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant  
Henry T. Grubbs, Jr.

Case Number: 04-08343

Names of the Respondents  
Morgan Stanley DW, Inc.  
Michael Joseph Condrón

Hearing Site: Pittsburgh, Pennsylvania

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

**REPRESENTATION OF PARTIES**

Claimant, Henry T. Grubbs, Jr., hereinafter referred to as "Claimant", was represented by Michael J. Betts, Esq., Betts Law Offices, Pittsburgh, Pennsylvania.

Respondents, Morgan Stanley DW, Inc. ("Morgan Stanley"), and Michael Joseph Condrón ("Condrón"), hereinafter collectively referred to as "Respondents", were represented by Anthony Vidovich, Esq., Blank Rome, LLP, Philadelphia, Pennsylvania.

**CASE INFORMATION**

Statement of Claim filed on December 8, 2004.

Claimant signed the Uniform Submission Agreement on November 16, 2004.

Statement of Answer filed by Respondents on October 4, 2004.

A representative of Respondent Morgan Stanley executed the Uniform Submission Agreement on March 9, 2005.

Respondent Condrón executed the Uniform Submission Agreement on March 10, 2005.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted the following causes of action, among others: breach of fiduciary duties, negligence, suitability, breach of contract, failure to supervise, suitability, vicarious liability and *respondeat superior*. The causes of action relate to the handling of Claimant's retirement assets by Respondents.

Unless specifically admitted in their Statement of Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: failure to state a claim upon which relief may be granted; authorization; contributory negligence and comparative negligence; Claimant's claims are barred by the economic Loss doctrine and the gist of the action doctrine; failure to state a claim upon which relief may be granted; assumption of the risk; Claimant's claims are barred by the doctrines of waiver, estoppel, laches, failure to mitigate damages, and ratification; and Claimant's claims are barred by the statute of limitations.

### **RELIEF REQUESTED**

Claimant in the Statement of Claim requested:

Compensatory Damages	amount unspecified
Attorney's Fees	amount unspecified
Other Costs	amount unspecified

Respondents requested that the Statement of Claim be dismissed in its entirety, that costs be assessed against Claimant and that the Arbitration Panel (the "Panel") order the expungement of all reference to this matter from Respondent Condron's Central Registration Depository ("CRD") record.

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

At the hearings on the merits, Respondents made a motion to dismiss the statement of claim based on statute of limitations. The Panel denied this motion.

At the close of Claimant's presentation of evidence, Respondents made an oral motion for directed verdict, which the Panel denied.

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

1. Claimant's claims are denied and dismissed in their entirety;
2. The parties shall bear their respective costs, except as Fees are specifically addressed below;  
and
3. Any and all relief not specifically addressed herein is denied in its entirety.

### **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
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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 at the time of the events giving rise to the dispute. Accordingly, Respondent Morgan Stanley is a party.

Member surcharge	= \$ 1,500.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,200.00

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A 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:

Two (2) Pre-hearing sessions with Panel @ \$ 1,000.00	= \$ 2,000.00
Pre-hearing conferences: August 24, 2005 1 session	
November 10, 2005 1 session	
Four (4) Hearing sessions @ \$ 1,000.00	= \$ 4,000.00
Hearing Dates: February 21, 2006 2 sessions	
February 22, 2006 2 sessions	
Total Forum Fees	= \$ 6,000.00

1. The Panel has assessed \$ 3,500.00 of the forum fees to Claimant.
2. The Panel has assessed \$ 2,500.00 of the forum fees jointly and severally to Respondents.

**Fee Summary**

1. Claimant is assessed and shall pay:

Initial Filing Fee	= \$ 250.00
Forum Fees	= \$ 3,500.00
Total Fees	= \$ 3,750.00
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 2,325.00

2. Respondent Morgan Stanley is assessed and shall pay:

Member Fees	= \$ 4,450.00
Total Fees	= \$ 4,450.00
Less payments	= \$ 4,450.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally assessed and shall pay:

Forum Fees	= \$ 2,500.00
Total Fees	= \$ 2,500.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 2,500.00

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

**ARBITRATION PANEL**

Marc A. Winters  
Edward A. Grupp, Esq.  
Karl F. Meyers

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator, Panelist
- Non-Public Arbitrator, Panelist

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Marc A. Winters  
Public Arbitrator, Presiding Chairperson

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

*Edward A. Grupp*

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Edward A. Grupp, Esq.  
Public Arbitrator, Panelist

*February 24, 2006*

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

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Karl F. Meyers  
Non-Public Arbitrator, Panelist

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

*February 24, 2006*

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

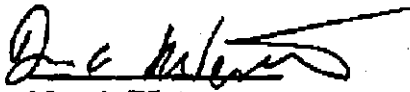
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Marc A. Winters  
Edward A. Grupp, Esq.  
Karl F. Meyers

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator, Panelist
- Non-Public Arbitrator, Panelist

**Concurring Arbitrator's Signature**



Marc A. Winters  
Public Arbitrator, Presiding Chairperson

12/23/06  
Signature Date

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Edward A. Grupp, Esq.  
Public Arbitrator, Panelist

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

\_\_\_\_\_  
Karl F. Meyers  
Non-Public Arbitrator, Panelist

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Signature Date

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Edward A. Grupp, Esq.	-	Public Arbitrator, Panelist
Karl F. Meyers	-	Non-Public Arbitrator, Panelist

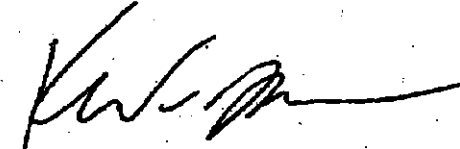
Concurring Arbitrators' Signatures

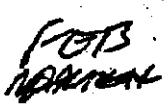
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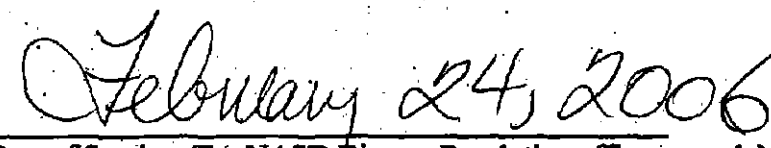
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Edward A. Grupp, Esq.  
Public Arbitrator, Panelist

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Signature Date

  
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Karl F. Meyers  
Non-Public Arbitrator, Panelist

 FEB 24, 2006  
\_\_\_\_\_  
Signature Date

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