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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Robert Todoroff

Case Number: 04-08496

Name of the Respondent  
Morgan Stanley DW Inc.

Hearing Site: Boca Raton, Florida

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

Robert Todoroff, hereinafter referred to as "Claimant", appeared pro se.

For Morgan Stanley DW Inc. ("MSDW"), hereinafter referred to as "Respondent": David Oppenheim, Esq.,  
Morgan Stanley DW Inc., Pensacola, Florida.

**CASE INFORMATION**

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

Claimant signed the Uniform Submission Agreement: February 10, 2005.

Statement of Answer filed by Respondent on or about: February 8, 2005.

Respondent signed the Uniform Submission Agreement: February 15, 2005.

Motion for Summary Judgment filed by Claimant on or about: March 17, 2006.

Response to Motion for Summary Judgment filed by Respondent on or about: March 20, 2006.

**CASE SUMMARY**

Claimant asserted the following causes of action: 1) breach of fiduciary duty; 2) unsuitability; and, 3) omissions. The causes of action relate to the purchase of various mutual funds including, but not limited to, Dreyfus Premier Future Leaders, Davis New York Venture Fund, Pimco Total Return and the Eaton Vance Income Fund of Boston in Claimant's accounts. Specifically, Claimant alleged that the Respondent, through its agent Charles Lyday, recommended unsuitable investments for him, which caused him to lose approximately \$31,000.00.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses. Specifically, Respondent contends that the investments recommended to Claimant were suitable for his investment objectives. In addition, any damages sustained by Claimant were due to his panic selling of his investments, which were the result of market fluctuation.

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$31,201.00 and costs in the amount of \$625.00 for NASD fees in connection with the filing of this matter.

Respondent requested that the Statement of Claim be dismissed in its entirety.

**OTHER ISSUES CONSIDERED AND DECIDED**

On March 23, 2006, the sole Arbitrator for this matter denied Claimant's Motion for Summary Judgment. In addition, Claimant made a Motion to Strike Respondent's pleadings, due to Respondents allegedly failing to provide copies of documents in response to Claimant's request to produce. This motion was deemed moot due to the Arbitrator's representation that the decision was made solely upon testimony of Claimant and the broker, Mr. Lyday, and not the documents presented by Respondents. Furthermore, Respondent made an ore tenus Motion to Dismiss at the conclusion of Claimant's case in chief. The Arbitrator denied this motion.

**AWARD**

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

This Arbitrator would like to explain that Claimant has the burden of proof in establishing that the Respondent recommended unsuitable investments to him, which resulted in his sustaining a loss of approximately \$31,000.00.

The Arbitrator found the testimony of both Claimant and the broker, Mr. Charles Lyday, to be credible and truthful in its content. In that this Arbitrator was unable to discount either individual testimony, the Claimant failed to meet the burden of proof as to the unsuitability of investments recommended by Mr. Lyday and therefore, as required by law, has found for the Respondent and there are no compensatory damages awarded.

Any and all claims for relief not specifically addressed herein, 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 = \$ 175.00

**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, MSDW is a party to this dispute and was a member of NASD at the time the following fees were assessed:

Member surcharge	= \$ 875.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$ 1,000.00</u>
Total Member Fees	= \$ 2,625.00

### **Adjournment Fees**

No requests for adjournments were filed in this matter for which fees were assessed.

### **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**

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:

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00	= \$ 900.00
Pre-hearing conferences: May 9, 2005 1 session	
September 1, 2005 1 session	
Two (2) Hearing sessions with the Arbitrator @ \$450.00	= \$ 900.00
<u>Hearing Date: March 23, 2006 2 sessions</u>	
Total Forum Fees	= \$ 1,800.00

The Arbitrator has assessed \$900.00 of the forum fees to Claimant.

The Arbitrator has assessed \$900.00 of the forum fees to Respondent.

### **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	= \$ 175.00
Forum Fees	= \$ 900.00
Total Fees	= \$ 1,075.00
Less payments	= \$ 625.00
Balance Due NASD Dispute Resolution	= \$ 450.00

Respondent is solely liable for:

Member Fees	= \$ 2,625.00
Forum Fees	= \$ 900.00
Total Fees	= \$ 3,525.00
Less payments	= \$ 2,625.00
Balance Due NASD Dispute Resolution	= \$ 900.00

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

**ARBITRATOR**

*Steven N. Ainbinder, Esq.*

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*Sole Public Arbitrator*

**Arbitrator's Signature**

/s/  
Steven N. Ainbinder, Esq.  
Sole Public Arbitrator

03/24/06  
Signature Date

03/24/06  
Date of Service (For NASD Dispute Resolution office use only)

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Balance Due NASD Dispute Resolution	= \$ 450.00

Respondent is solely liable for:

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Forum Fees	= \$ 900.00
Total Fees	= \$ 3,525.00
Less payments	= \$ 2,625.00
Balance Due NASD Dispute Resolution	= \$ 900.00


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

ARBITRATOR

Steven N. Ainsbinder, Esq.

Sole Public Arbitrator

Arbitrator's Signature



Steven N. Ainsbinder, Esq.  
Sole Public Arbitrator

3/24/06  
Signature Date

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