

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Robert C. Ghioldi, Claimant v. Morgan Stanley DW Inc. and David A. Dyck,  
Respondents

Case Number: 05-01771

Hearing Site: San Francisco, California

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

**REPRESENTATION OF PARTIES**

For Claimant:

R. Ernest Montanari, Esq.  
Musacchio & Montanari, P.C.  
Walnut Creek, California

For Respondents:

Melissa M. Maccarone, Esq.  
Morgan Stanley DW Inc.  
San Francisco, California

**CASE INFORMATION**

Statement of Claim filed: March 30, 2005

Claimant's Opposition to Motion to Dismiss filed: June 8, 2006

Claimant's Uniform Submission Agreement signed: April 5, 2005

Joint Statement of Answer and Affirmative Defenses, and Motion to Dismiss filed by  
Respondents Morgan Stanley DW Inc. ("Morgan Stanley") and David A. Dyck: June 3,  
2005

Respondents' Motion to Dismiss filed: May 19, 2006

Respondents' Reply in Support of Motion to Dismiss filed: June 20, 2006

Respondent Morgan Stanley's Uniform Submission Agreement signed: June 3, 2005

**CASE SUMMARY**

Claimant alleged that he suffered damages because of unauthorized trading with  
respect to investments in Tenneco Automotive Inc. stock. Claimant also alleged breach

of fiduciary duty, breach of contract and misrepresentation regarding the handling of his account.

Respondents denied Claimant's allegations of wrongdoing and denied any liability to Claimant. Respondents also asserted affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages according to proof at hearing, costs in the amount of \$1,500.00 and attorney's fees.

Respondents requested that Claimant take nothing from the Statement of Claim, that the Panel enter an award in favor of Respondents and expunging Mr. Dyck's CRD record, and award such further relief as the Panel deems just and proper.

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

Respondent David A. Dyck did not file with NASD Dispute Resolution ("NASD-DR") a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD-DR Code of Arbitration Procedure ("the Code") and, having answered Claimant's Claim, is bound by the determination of the Panel on all issues submitted.

The Panel 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, and positions of the parties relative to Respondents' Motions to Dismiss, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondents' Motions to Dismiss are granted. The Panel is in unanimous agreement that the Claimant suffered no damages as a result of the Respondents' actions. Accordingly, all claims by Claimant are dismissed.
- 2) As the Respondents' Motions to Dismiss are granted, the Respondents' Motion to Compel Production of Documents is moot and is denied.
- 3) On or about June 28, 2006, the Panel determined that it had insufficient information to come to a decision regarding the request put forth in the Respondents' Statement of Answer that the above captioned arbitration be expunged from David A. Dyck's registration records maintained by the Central Registration Depository ("CRD"). The

Panel permitted Respondents to submit additional information regarding the issue of expungement. Respondents did not file additional information regarding the expungement issue. Accordingly, the Panel declines to recommend that the above captioned arbitration be expunged from Mr. Dyck's CRD records.

- 4) Each party shall bear its own costs, including attorney's fees.
- 5) All other relief not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD-DR received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$250.00
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#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, Morgan Stanley is a party and the following fees are assessed:

Member Surcharge	= \$1,500.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$2,200.00
<b>Total Member Fees</b>	<b>= \$4,450.00</b>

#### **Forum Fees and Assessments**

The Panel 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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

(1) Pre-hearing conference session with the Panel			
@ \$1,000.00/session			= \$1,000.00
Pre-hearing conference:	September 23, 2005	1 session	

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<b>Total Forum Fees</b>	<b>= \$1,000.00</b>
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The Panel assessed the \$1,000.00 in forum fees to Claimant Robert C. Ghioldi.

**Fee Summary**

1. Claimant Robert C. Ghioldi is charged with the following fees and costs:

Initial Filing Fee	= \$ 250.00
Forum Fees	= \$ 1,000.00
Total Fees	= \$ 1,250.00
Less Payments	= \$( 1,250.00)
<b>Balance Due NASD-DR</b>	<b>= \$ 0.00</b>

2. Respondent Morgan Stanley is charged with the following fees and costs:

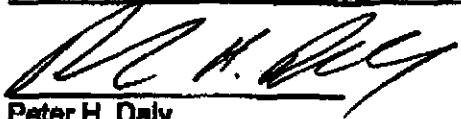
Member Fees	= \$ 4,450.00
Less Payments	= \$( 4,450.00)
<b>Balance Due NASD-DR</b>	<b>= \$ 0.00</b>

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

**ARBITRATION PANEL**

Peter H. Daly	-	Public Arbitrator, Presiding Chair
Laura G. Simpson, Esq.	-	Public Arbitrator
Robert R. Fischer	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



Peter H. Daly  
Chair, Public Arbitrator

7/25/06  
Signature Date

Laura G. Simpson, Esq.  
Public Arbitrator

Signature Date

Robert R. Fischer  
Non-Public Arbitrator

Signature Date

7/26/06  
Date of Service

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