

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

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In the Matter of the Arbitration Between:

Kenneth C. Stephan (Claimant) v. Morgan Stanley DW Inc., Thomas Biadas, and John Damiano (Respondents)

Case Number: 05-03667

Hearing Site: Cleveland, Ohio

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

**REPRESENTATION OF PARTIES**

Claimant Kenneth C. Stephan hereinafter referred to as "Claimant": Rebecca J. Castell, Esq. and Jack Landskroner, Esq., Landskroner, Grieco, Madden, Ltd., Cleveland, OH.

Respondents Morgan Stanley DW Inc. ("Morgan Stanley"), Thomas Biadas ("Biadas"), and John Damiano ("Damiano") hereinafter collectively referred to as "Respondents": Joseph S. Simms, Esq. and Michael N. Ungar, Esq., Ulmer Berne LLP, Cleveland, OH.

**CASE INFORMATION**

Statement of Claim filed on or about: July 14, 2005.

Claimant signed the Uniform Submission Agreement: July 14, 2005.

Statement of Answer and Motion to Dismiss filed by Respondents on or about: October 7, 2005.

Morgan Stanley did not submit a Uniform Submission Agreement.

Biadas did not submit a Uniform Submission Agreement.

Damiano did not submit a Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract, negligence, failure to supervise, breach of fiduciary duty, misrepresentations, suitability, and respondeat superior. The causes of action relate to common stock and 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 compensatory damages in the amount not less than \$171,000.00, punitive damages, attorneys' fees, expenses, forum fees, costs, expert witness fees, and such other and further relief as the Panel may find just and reasonable.

Respondents requested dismissal of the Statement of Claim in its entirety, expungement of this matter from Respondent Biadas' CRD record, expungement of this matter from Respondent Damiano's CRD record, and such further relief that the Panel deems just and proper.

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

Respondents Morgan Stanley, Biadas, and Damiano 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, are bound by the determination of the Panel on all issues submitted.

On April 4, 2006 Claimant informed NASD Dispute Resolution that the parties settled this matter.

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

### **AWARD**

The parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of both parties for an entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

1. Claimant voluntarily dismisses all claims against Respondent Biadas and Respondent Biadas agrees to waive, disclaim, and/or release any claims against Claimant for losses, attorneys' fees, or any other damages.
2. Claimant and Respondents Morgan Stanley and Damiano have entered into a confidential settlement agreement.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Biadas' registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-16, Respondent Biadas must obtain confirmation from a court of competent jurisdiction before the 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 of the NASD Code of Arbitration Procedure, the arbitration panel has made the following affirmative findings of fact:

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

4. Each party shall bear their own costs and attorneys' fees.
5. 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	= \$ 300.00
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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, Morgan Stanley DW Inc. is a party.

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00

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

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the 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 single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: March 27, 2006 1 session	

Two (2) Pre-hearing sessions with Panel @ \$1,125.00	= \$ 2,250.00
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Pre-hearing conferences: December 12, 2005 1 session  
February 20, 2006 1 session

One (1) Hearing session with Panel @ \$1,125.00	= \$ 1,125.00
Hearing Dates: June 7, 2006 1 session	
<u>Total Forum Fees</u>	<u>= \$ 3,825.00</u>

1. Regarding the December 12, 2005 pre-hearing session and the June 7, 2006 hearing session,
  - a. The Panel has assessed \$1,125.00 of the forum fees against Claimant.
  - b. The Panel has assessed \$1,125.00 of the forum fees jointly and severally against Respondents
2. Pursuant to Rule 10306, the remaining forum fees are assessed as follows:
  - a. Claimant is assessed \$393.75 of the forum fees.
  - b. Respondent Morgan Stanley is assessed \$393.75 of the forum fees.
  - c. Respondent Biadas is assessed \$393.75 of the forum fees.
  - d. Respondent Damiano is assessed \$393.75 of the forum fees.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 1,518.75
<u>Total Fees</u>	<u>= \$ 1,818.75</u>
<u>Less payments</u>	<u>= \$ 1,425.00</u>
Balance Due NASD Dispute Resolution	= \$ 393.75
2. Respondent Morgan Stanley is solely liable for:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 393.75
<u>Total Fees</u>	<u>= \$ 5,593.75</u>
<u>Less Payments</u>	<u>= \$ 5,875.00</u>
Refund Due Morgan Stanley	= \$ 281.25
3. Respondent Biadas is solely liable for:

Forum Fees	= \$ 393.75
<u>Total Fees</u>	<u>= \$ 393.75</u>
<u>Less Payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 393.75
4. Respondent Damiano is solely liable for:

Forum Fees	= \$ 393.75
<u>Total Fees</u>	<u>= \$ 393.75</u>
<u>Less Payments</u>	<u>= \$ 0.00</u>

Balance Due NASD Dispute Resolution = \$ 393.75

5. Respondents are jointly and severally liable for:

Forum Fees = \$ 1,125.00

Total Fees = \$ 1,125.00

Less Payments = \$ 1,125.00


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**

Thomas R. Skulina, Esq.	-	Public Arbitrator, Presiding Chairperson
Al J. Hufschmidt	-	Public Arbitrator
Blanca E. Ortiz	-	Non-Public Arbitrator

**Concerning Arbitrators' Signatures**

  
Thomas R. Skulina, Esq.  
Public Arbitrator, Presiding Chairperson

6-16-06  
Signature Date

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Al J. Hufschmidt  
Public Arbitrator

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

June 19, 2006  
Blanca E. Ortiz  
Non-Public Arbitrator

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Signature Date

June 19, 2006  
Date of Service (For NASD Dispute Resolution use only)

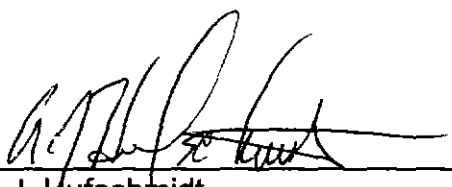
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Al J. Hufschmidt	-	Public Arbitrator
Blanca E. Ortiz	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Thomas R. Skulina, Esq.  
Public Arbitrator, Presiding Chairperson

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Signature Date

  
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Al J. Hufschmidt  
Public Arbitrator

  
\_\_\_\_\_  
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Blanca E. Ortiz  
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