

**Stipulated Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant  
Terry A. Messner

Case Number: 05-03723

Names of the Respondents  
Morgan Stanley DW Inc.  
William Messner

Hearing Site: Orlando, Florida

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

**REPRESENTATION OF PARTIES**

For Terry A. Messner, hereinafter referred to as "Claimant": Scott L. Silver, Esq., Blum & Silver, LLP, Coral Springs, FL.

For Morgan Stanley DW Inc. ("MSDW") and William Messner ("Messner"), hereinafter collectively referred to as "Respondents": Peter W. Homer, Esq. and Christopher King, Esq., HomerBonner, Miami, FL.

**CASE INFORMATION**

Statement of Claim filed on or about: July 20, 2005.

Claimant signed the Uniform Submission Agreement: July 1, 2005.

Statement of Answer and Counterclaim filed by Respondents on or about: October 12, 2005.

Respondents MSDW and Messner did not file executed Uniform Submission Agreements.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract; violation of industry rules including, but not limited to, NYSE Rule 405 and NASD Rule 2310; negligent hiring, retention, and supervision; common law fraud; negligence; and, breach of fiduciary duty. The causes of action relate to the purchase of unspecified securities in Claimant's account.

Unless specifically admitted in their Answer, Respondents denied all allegations of wrongdoing set forth in the Statement of Claim. Based on these and other facts, Respondents asserted various defenses and affirmative defenses, and requested expungement of this matter from Respondent Messner's NASD Central Registration Depository ("CRD") records. In their Counterclaim, Respondents asserted the cause of action of indemnification, or in the alternative, contribution.

### **RELIEF REQUESTED**

Claimant requested unspecified compensatory damages, interest or reasonable market return, rescission, punitive damages, costs, and for such other relief as is just and proper.

Respondents requested that all claims against them be dismissed, that Respondents be awarded their costs, that Respondents be permitted to seek their fees in a court of law, and that the undersigned arbitrators (the "Panel") order expungement of this matter from Respondent Messner's CRD record. In their Counterclaim, Respondents requested indemnification, or alternatively, contribution, from Claimant to the extent there is any liability against Respondents for the trade decisions made by Claimant's third party money managers.

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

On or about February 10, 2006, Claimant and Respondent Messner notified NASD Dispute Resolution that they had dismissed their respective claims against each other.

On or about August 28, 2006, Claimant and Respondent MSDW notified NASD Dispute Resolution that they had dismissed their respective claims against each other.

On or about September 25, 2006, the parties filed a request for the entry of a proposed Stipulated Award ("Stipulated Award") which recommended expungement of this matter from the NASD CRD records of Respondent Messner.

On or about October 3, 2006, the Panel entered an order which granted the parties' request for entry of the proposed Stipulated Award.

Respondents MSDW and Messner did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure ("Code") and, having answered the claim, are bound by the determination of the Panel on all issues submitted.

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

### **AWARD**

After considering the pleadings and the proposed Stipulated Award, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims for relief are dismissed, with prejudice, with each party to bear its respective costs and attorneys' fees.
2. Respondents' Counterclaim is dismissed, with prejudice, with each party to bear its respective costs and attorneys' fees.

3. The Panel recommends the expungement of all references to the above-captioned arbitration from Respondent William Messner's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notice to Member 04-16, Respondent William Messner 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.

4. Pursuant to Rule 2130 of the Code, 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.

Respondent William Messner was not involved in the alleged investment-related sales practice violations, as the investments at issue were placed by an independent investment advisor and Respondent William Messner did not place any of, could not have placed any of, and did not make any investment recommendations for, the investment transactions at issue.

5. Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages, are 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	= \$ 250.00
Counterclaim filing fee	= \$ 500.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent MSDW is a member firm and party.

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

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were assessed during these proceedings.

### **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 three-day cancellation fees were assessed during these proceedings.

### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

No injunctive relief fees were assessed during these proceedings.

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

One (1) Pre-hearing session with a single arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conference: March 29, 2006	1 session
Two (2) Pre-hearing sessions with the Panel @ \$1,000.00/session	= \$2,000.00
Pre-hearing conferences: November 21, 2005	1 session
December 21, 2005	1 session
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Total Forum Fees	= \$2,450.00

The Panel has assessed \$1,225.00 of the forum fees to Claimant.  
The Panel has assessed \$1,225.00 of the forum fees to Respondents, jointly and severally.

### **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 these proceedings.

### **Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 250.00
Forum Fees	= \$1,225.00
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Total Fees	= \$1,475.00
<u>Less payments</u>	<u>= \$1,250.00</u>
Balance Due NASD Dispute Resolution	= \$ 225.00

Respondent MSDW is solely liable for:

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

Respondents are jointly and severally liable for:

Counterclaim Filing Fee	= \$ 500.00
Forum Fees	= \$1,225.00
Total Fees	= \$1,725.00
<u>Less payments</u>	<u>= \$1,550.00</u>
Balance Due NASD Dispute Resolution	= \$ 175.00

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

#### **ARBITRATION PANEL**

Richard E. Shute	-	Public Arbitrator, Presiding Chairperson
Frank J. Tepper, Esq.	-	Public Arbitrator
Frederick T.W. Reed	-	Non-Public Arbitrator

#### **Concurring Arbitrators' Signatures**

/s/  
Richard E. Shute  
Public Arbitrator, Presiding Chairperson

                      
Signature Date

/s/  
Frank J. Tepper, Esq.  
Public Arbitrator

                      
Signature Date

/s/  
Frederick T.W. Reed  
Non-Public Arbitrator

                      
Signature Date

October 6, 2006

Date of Service (For NASD Dispute Resolution use only)

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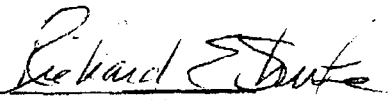
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Public Arbitrator, Presiding Chairperson

10/6/2006  
Signature Date

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Public Arbitrator

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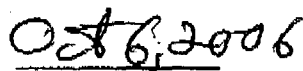
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