

**STIPULATED AWARD  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of Claimant

Borough of Crafton as Trustee for the Borough  
of Crafton Employee's Pension Fund and the  
Borough of Crafton Police Pension Fund

vs.

Case Number: 05-04313  
Hearing Site: Pittsburgh, Pennsylvania

Names of Respondents

Morgan Stanley DW Inc.,  
Sean McClorey, and  
Steven W. Wilde

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**NATURE OF THE DISPUTE**

Customer vs. Member and Associated Persons

**REPRESENTATION OF PARTIES**

Borough of Crafton as Trustee for the Borough of Crafton Employee's Pension Fund and the Borough of Crafton Police Pension Fund ("Claimant") was represented by Joseph S. D. Christof, II, Esq., Dickie, McCamey & Chilcote, P.C., Pittsburgh, Pennsylvania.

Morgan Stanley DW Inc. ("MSDW"), Sean McClorey (McClorey"), and Steven W. Wilde ("Wilde"), hereinafter collectively referred to as "Respondents," were represented by Joseph P. Pohl, III, Esq., Reed Smith LLP, Pittsburgh, Pennsylvania.

**CASE INFORMATION**

The Statement of Claim was filed on or about August 17, 2005. The Submission Agreement of Claimant was signed on or about August 15, 2005.

The Joint Statement of Answer was filed by Respondents about November 23, 2005. The Submission Agreement of Respondent MSDW was signed on or about October 3, 2005 by Howard Sendrovitz, Vice President.

**CASE SUMMARY**

Claimant asserted the following causes of action: unsuitability; breach of contract; failure

to supervise; breach of fiduciary duty; fraud; negligent misrepresentation; violation of the Pennsylvania Securities Act; violation of the Federal Securities Laws; breach of the standard of care established by the NASD and NYSE rules; liability under the common law doctrines of respondeat superior and the common law principles of agency. The causes of action related to the recommendation and purchase of technology stocks and aggressive equity investments for mutual funds. Claimant alleged that the investment strategy Respondents followed exposed the pension funds to an unreasonable degree of risk given the investment objectives of low-risk, protection of assets, and stable income for future retirees.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant ratified the allegedly unauthorized transactions by failing to promptly repudiate the transactions and demand rescission of them after notice of the investments; Claimant was careless and negligent in the matters alleged, thereby causing and contributing to any injury, damage or loss to Claimant; at all times, Claimant consented to the acts and events alleged in the Claim; the Statement of Claim does not state facts sufficient to constitute causes of action against them; the Statement of Claim is barred by the doctrine of laches; Claimant has waived and is estopped from alleging the matters set forth in the Statement of Claim; Claimant assumed the risk that the Pension Funds would decline in value; Claimant's non-federal and non-contractual claims are barred by the applicable statutes of limitations under New York law; Claimant's claim under the Pennsylvania Securities Act is barred because the relationship between the parties is governed by New York law, and in any event, Claimant's claim under the Pennsylvania Securities Act is barred by the applicable statute of limitations; Claimant's claims under the Federal Securities Laws are barred by the applicable statute of limitations; Claimant's alleged losses and damages should be negated or off-set by Claimant's failure to mitigate such alleged losses or damages; Claimant's alleged losses failed to take in to account the multiple distributions from the Pension Funds, thereby inflating Claimant's stated losses and damages; and Claimant failed to allege sufficiently outrageous and malicious conduct to warrant an award of punitive damages in this case.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$ 590,000.00
Exemplary/Punitive Damages	\$1,770,000.00
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondents requested that the claims asserted against them be denied in their entirety, that they be awarded their costs and attorneys' fees and that this matter be expunged from the NASD's records.

### **OTHER ISSUES CONSIDERED & DECIDED**

Respondents, McClorey and Wilde, did not file with the 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.

The Panel heard a presentation of facts and evidence in regard to the parties' Joint Motion for Order of Expungement on October 13, 2006. The Panel makes the following affirmative findings of fact:

- 1.) With regard to the allegations and claims of Claimant in this matter, Respondent, Steven W. Wilde, was not involved in any alleged investment related sales practice violation, forgery, theft, misappropriation, or conversion of funds;
- 2.) At the time Claimant filed its Statement of Claims, Claimant had limited information concerning said claims and allegations and the responsible parties;
- 3.) Steven W. Wilde was named as a Respondent in this matter on the basis of the fact that he had inherited responsibility for certain accounts of Claimant after the tenure of Respondent McClorey ended with regard to said accounts;
- 4.) Steven W. Wilde was named as a Respondent solely to preclude the defense assertion of other respondents that Mr. Wilde should have been named as a party responsible for Claimant's claims;
- 5.) After Respondent, Steven W. Wilde, inherited responsibility for the accounts of Claimant, Respondent Wilde did in fact present detailed investment plans to Claimant to improve the performance of said accounts;
- 6.) Claimant never took action, either affirmatively or negatively, on any proposal made by Respondent, Steven W. Wilde;
- 7.) After Respondent, Steven W. Wilde, inherited responsibility for the accounts of Claimant, all trades made for Claimant by Respondent Wilde

were made at the specific request of Claimant in order to provide necessary pension fund liquidity; and

- 8.) The discovery completed after the Statement of Claim and the Answer were filed, demonstrated that Respondent, Steven W. Wilde, was not involved in any of the alleged misconduct at issue in this case.

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**

After considering the pleadings and the evidence presented at the pre-hearing on the Joint Motion for Order of Expungement, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Pursuant to the settlement agreement, Claimant's claims, each and all, are hereby denied and dismissed with prejudice;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 3.) The Panel recommends the expungement of all references to the above captioned arbitration from Respondent, Steven W. Wilde's, registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent, Steven W. Wilde, 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, the 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; and

- 4.) Any relief not specifically enumerated, including punitive damages and attorneys' fees, is hereby denied with prejudice.

## **FEES**

Pursuant to the Code, the following fees are assessed:

### **Filing Fees**

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial Claim 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 that employed the associated persons at the time of the events giving rise to the dispute. In this matter, the member firm is Morgan Stanley DW Inc.

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,000.00

### **Forum Fees and Assessments**

The Panel has assessed forum fees for each hearing session conducted or each decision rendered on a discovery-related motion on the papers. 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 Panel x \$1,200.00	= \$ 2,400.00
Pre-hearing conferences: March 9, 2006	1 session
October 13, 2006	1 session
<hr/> Total Forum Fees	<hr/> = \$ 2,400.00

The Panel has assessed \$2,400.00 of the forum fees to the Claimant, Borough of Crafton as Trustee for the Borough of Crafton Employee's Pension Fund and the Borough of Crafton Police Pension Fund.

## **FEE SUMMARY**

Claimant, Borough of Crafton as Trustee for the Borough of Crafton Employee's Pension Fund and the Borough of Crafton Police Pension Fund, is liable for:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 2,400.00
<hr/> Total Fees	<hr/> = \$ 2,900.00

<u>Less payments</u>	= \$ 1,700.00
Balance Due NASD Dispute Resolution	= \$ 1,200.00

Respondent, Morgan Stanley DW Inc., is liable for:

<u>Member Fees</u>	= \$ 8,550.00
<u>Total Fees</u>	= \$ 8,550.00
<u>Less payments</u>	= \$ 8,550.00
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**

Albert Joseph Boucek, Esq.- Public Arbitrator, Presiding Chair  
Linda Arlene Michler, Esq. - Public Arbitrator  
Bert Cliff - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

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Albert Joseph Boucek, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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Linda Arlene Michler, Esq.  
Public Arbitrator

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Signature Date

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Bert Cliff  
Non-Public Arbitrator

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Signature Date

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Date of Service (For NASD office use only)

NASD Dispute Resolution  
Arbitration No. 05-04313  
Stipulated Award Page 6 of 6

Less payments	= \$ 1,700.00
Balance Due NASD Dispute Resolution	= \$ 1,200.00

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Linda Arlene Michler, Esq. - Public Arbitrator  
Bert Cliff - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

Albert J. Boucek  
Albert Joseph Boucek, Esq.  
Public Arbitrator, Presiding Chair

10-27-2006  
Signature Date

Linda Arlene Michler, Esq.  
Linda Arlene Michler, Esq.  
Public Arbitrator

Signature Date

Bert Cliff  
Bert Cliff  
Non-Public Arbitrator

Signature Date

11/6/06 km  
Date of Service (For NASD office use only)

NASD Dispute Resolution  
Arbitration No. 05-04313  
Stipulated Award Page 6 of 8

<u>Less payments</u>	= \$ 1,700.00
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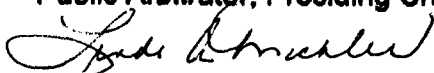
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Linda Arlene Michler, Esq. - Public Arbitrator  
Bert Cliff - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

\_\_\_\_\_  
Albert Joseph Boucek, Esq.  
Public Arbitrator, Presiding Chair

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



October 27, 2006

\_\_\_\_\_  
Linda Arlene Michler, Esq.  
Public Arbitrator

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

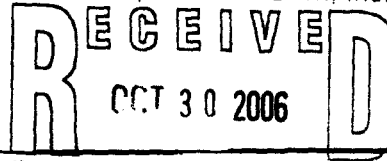
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Bert Cliff  
Non-Public Arbitrator

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Signature Date

11/6/06 

Date of Service (For NASD office use only)





Less payments = \$ 1,700.00  
Balance Due NASD Dispute Resolution = \$ 1,200.00

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Bert Cliff - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

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Albert Joseph Boucek, Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Linda Arlene Michler, Esq.  
Public Arbitrator

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

Bert S. Cliff  
Bert Cliff  
Non-Public Arbitrator

10-26-06  
Signature Date

11/6/06 Mm  
Date of Service (For NASD office use only)