

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

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In the Matter of the Arbitration Between:

Morgan Stanley DW Inc. (Claimant) vs. Daniel V. Scouler (Respondent)

Case Number: 05-05372

Hearing Site: New York, New York

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Nature of the Dispute: Member vs. Associated Person

**REPRESENTATION OF PARTIES**

Claimant Morgan Stanley DW Inc. hereinafter referred to as "Claimant": Robert C. Scremin, Esq., Diane C. Fischer, Esq., Michael Schmiede, Esq., and Thomas Voltz, Esq., Kane & Fischer, Ltd., Chicago, IL.

Respondent Daniel V. Scouler hereinafter referred to as "Respondent" did not enter an appearance in this matter.

**CASE INFORMATION**

Statement of Claim filed on or about: October 18, 2005.

Claimant signed the Uniform Submission Agreement: October 11, 2005.

Respondent did not submit a Statement of Answer or sign the Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of promissory note and failure to repay commission deficit.

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$147,325.00, accrued interest in the amount of \$4,432.00, interest at the rate of 16% per annum beginning from January 25, 2005 to the date of payment, costs, attorneys' fees, and any and all further relief that the Panel deems just and proper.

**OTHER ISSUES CONSIDERED AND DECIDED**

Upon review of the file and the representations made on behalf of the Claimant, the undersigned Arbitrators determined that Respondent Daniel V. Scouler has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondent Daniel V. Scouler did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

By Order dated May 25, 2006 the Panel granted Claimant's request that the parties appear telephonically at the June 1, 2006 hearing.

Claimant, the sole party to appear in this matter, has 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, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable for and shall pay to Claimant compensatory damages in the amount of \$147,325.00 plus interest in the amount of \$4,436.00, calculated at the rate of 4% per annum, beginning from April 23, 2004 to January 25, 2005.
2. Respondent is liable for and shall pay to Claimant costs in the amount of \$10,453.64.
3. Any and all relief not specifically addressed herein 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	= \$1,000.00
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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 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:

One (1) Pre-hearing session with Panel @ \$1,125.00	= \$ 1,125.00
Pre-hearing conference: April 10, 2006 1 session	
Three (3) Hearing sessions with Panel @ \$1,125.00	= \$ 3,375.00
Hearing Dates: June 1, 2006 1 session	
November 2, 2006 2 sessions	
<hr/> Total Forum Fees	<hr/> = \$ 4,500.00

1. The Panel has assessed \$4,500.00 of the forum fees to Respondent.

#### Fee Summary

1. Claimant is solely liable for:	
Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 5,200.00
Total Fees	= \$ 6,200.00
<u>Less payments</u>	<u>= \$ 7,325.00</u>
Refund Due Claimant	= \$ 1,125.00
2. Respondent is solely liable for:	
Forum Fees	= \$ 4,500.00
Total Fees	= \$ 4,500.00
<u>Less Payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 4,500.00

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

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Arbitration No. 05-05372  
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**ARBITRATION PANEL**

Judith C. Greene - Non-Public Arbitrator, Presiding Chairperson  
Susan E. Harkins, Esq. - Non-Public Arbitrator  
Jeffrey L. Friedman, Esq. - Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

Judith C. Greene, Esq.  
Judith C. Greene  
Non-Public Arbitrator, Presiding Chairperson

11/6/06  
Signature Date

Susan E. Harkins, Esq.  
Non-Public Arbitrator

Signature Date

Jeffrey L. Friedman, Esq.  
Non-Public Arbitrator

Signature Date

**November 6, 2006**

Date of Service (For NASD Dispute Resolution use only)

**ABITRATION PANEL**

Judith C. Greene - Non-Public Arbitrator, Presiding Chairperson  
Susan E. Harkins, Esq. - Non-Public Arbitrator  
Jeffrey L. Friedman, Esq. - Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

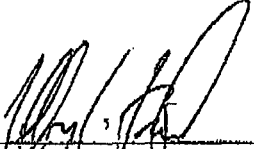
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Judith C. Greene  
Non-Public Arbitrator, Presiding Chairperson

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Signature Date

\_\_\_\_\_  
Susan E. Harkins, Esq.  
Non-Public Arbitrator

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

  
\_\_\_\_\_  
Jeffrey L. Friedman, Esq.  
Non-Public Arbitrator

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

**November 6, 2006**

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Date of Service (For NASD Dispute Resolution use only)