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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Mark B. Polson

Case Number: 05-05622

Names of the Respondents  
Morgan Stanley Dean Witter & Company  
Richard B. Hirsch

Hearing Site: Birmingham, Alabama

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

**REPRESENTATION OF PARTIES**

For Mark B. Polson, hereinafter referred to as "Claimant": Stephen D. Heninger, Esq., Heninger, Burge, Vargo & Davis, LLP., Birmingham, Alabama.

For Morgan Stanley Dean Witter & Company ("MSDW") and Richard B. Hirsch ("Hirsch"), hereinafter referred to as "Respondents": David Oppenheim, Esq., Morgan Stanley DW, Inc., Pensacola, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: November 4, 2005.

Claimant signed the Uniform Submission Agreement: December 6, 2006.

Statement of Answer and Motion to Dismiss filed by Respondents on or about: January 13, 2006.

Respondent MSDW signed the Uniform Submission Agreement: November 18, 2005.

Respondent Hirsch did not file a signed Uniform Submission Agreement.

Response to Motion to Dismiss filed by Claimant on or about: May 1, 2006.

Reply in Further Support of their Motion to Dismiss filed by Respondents on or about: May 16, 2006.

**CASE SUMMARY**

Claimant asserted the following causes of action: 1) negligence; 2) breach of contract; 3) fraud; 4) misrepresentation; and, 5) breach of fiduciary duty. The causes of action relate to the release of certain funds to Claimant's estranged wife.

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 of \$75,000.00 and an unspecified amount of punitive damages.

Respondents requested that the Statement of Claim be dismissed in its entirety, that Claimant take nothing in this action and an award of all costs.

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

Respondent Hirsch 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, having answered the claim, is bound by the determination of the Panel on all issues submitted.

On December 18, 2006, a telephonic hearing was held with the parties and the Panel to hear oral argument on Respondents' Motion to Dismiss. The Panel granted the motion.

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

### **AWARD**

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

Respondents' Motion to Dismiss is granted and all of Claimant's claims are dismissed in their entirety.

After considering the letter submitted by the attorney for Respondent Hirsh, pursuant to NASD Rule 2130, the Panel makes the affirmative finding that the claim, allegation or information is clearly erroneous, that Respondent Hirsch was not involved in the alleged investment related sales practice violation and that the claim allegation and information is false. Therefore, the Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Hirsch's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-16, Respondent Hirsch 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.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages, are dismissed.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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 = \$ 225.00

**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 person at the time of the events giving rise to the dispute. Accordingly, Respondent MSDW is a party to this dispute and was a member of NASD at the time the following fees were assessed:

Member surcharge	= \$ 1,100.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$ 1,700.00</u>
Total Member Fees	= \$ 3,550.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No requests for adjournments were filed in this matter.

**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 cancellation fees were assessed in this matter.

**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 incurred during this proceeding.

**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:

Two (2) Pre-hearing sessions with the Panel @ \$ 750.00	= \$ 1,500.00
Pre-hearing conference: March 30, 2006 1 session	
December 18, 2006 1 session	
<u>Total Forum Fees</u>	<u>= \$ 1,500.00</u>

The Panel has assessed \$1,125.00 of the forum fees to Claimant.  
The Panel has assessed \$375.00 of the forum fees jointly and severally to Respondents.

**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 this proceeding.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$ 1,125.00
Total Fees	= \$ 1,350.00
Less payments	= \$ 975.00
Balance Due NASD Dispute Resolution	= \$ 375.00

Respondent MSDW is solely liable for:

Member Fees	= \$ 3,550.00
Total Fees	= \$ 3,550.00
Less payments	= \$ 3,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

Forum Fees	= \$ 375.00
Total Fees	= \$ 375.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 375.00

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

**ARBITRATION PANEL**

Samuel Appel, JD	-	Public Arbitrator, Presiding Chairperson
Gary J. Leshaw, JD	-	Public Arbitrator
Royce Alan Burns	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
Samuel Appel, JD  
Public Arbitrator, Presiding Chairperson

12/21/06  
Signature Date

/s/  
Gary J. Leshaw, JD  
Public Arbitrator

12/21/06  
Signature Date

/s/  
Royce Alan Burns  
Non-Public Arbitrator

12/21/06  
Signature Date

12/22/06  
Date of Service (For NASD Dispute Resolution office use only)

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Arbitration No. 05-05622  
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<u>Less payments</u>	<u>= \$ 3,550.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

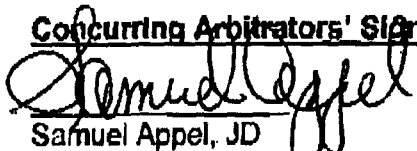
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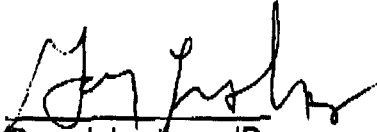
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Public Arbitrator, Presiding Chairperson

  
Signature Date



Gary J. Leshaw, JD  
Public Arbitrator

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Signature Date

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