

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Claimant  
Scott Friedman

v.

06-00388  
Minneapolis, Minnesota

Respondents  
Morgan Stanley DW, Inc., and John Eric Falldin

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**NATURE OF DISPUTE**

Customer v. Member Firm and Associated Person

**REPRESENTATION OF PARTIES**

Scott Friedman ("**Claimant**") was represented by Donald R. McNeil, Esq., of Coleman, Hull & Van Vliet, PLLP, Minneapolis, Minnesota.

Morgan Stanley DW, Inc. ("**MSDW**") and John Eric Falldin ("**Falldin**"), hereinafter collectively referred to as "**Respondents**," were represented by James J. Fontanilla, Esq., of Morgan Stanley DW, Inc., San Francisco, California.

**CASE INFORMATION**

The Statement of Claim was filed on or about January 24, 2006. The Submission Agreement of Claimant was signed on or about February 2, 2006.

The Statement of Answer was filed jointly by MSDW and Falldin on or about March 31, 2006. The Submission Agreement of MSDW was signed on or about March 31, 2006. The Submission Agreement of Falldin was signed on or about March 29, 2006.

**CASE SUMMARY**

Claimant asserted causes of action including the following: suitability, common law fraud, negligence, breach of fiduciary duty, breach of contract and vicarious liability. The causes of action related to the purchase of Sirius Satellite Radio common stock. Claimant alleged that he was not warned of the risks involved with an overly concentrated portfolio and that Respondents should not have encouraged Claimant to make additional purchases of the stock given its volatility and Claimant's medical condition.

Respondents denied the allegations set forth in the Statement of Claim and asserted defenses including the following: Claimant failed to state a claim upon which relief can be granted; Claimant was fully advised of, and understood the nature of, investments purchased in his accounts; Claimant had full, complete, accurate and contemporaneous knowledge concerning the accounts at issue, and therefore is precluded and estopped from any recovery in this action; any diminution in the value of the investments at issue was caused, in whole or in part, by the general decline in the investment market, the economy and/or other events outside of the control of Respondents; Claimant had full control over the investment decisions in the accounts at issue; and any losses incurred were the result of market price fluctuations and risks Claimant knowingly assumed; and Claimant's claims are barred by the applicable statutes of limitations, statutes of repose and/or laches.

### **RELIEF REQUESTED**

Claimant requested an award of \$220,000 in compensatory damages, plus lost opportunity damages, costs, attorneys' fees, interest, punitive damages and any other relief the panel deemed just and equitable.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. In addition, Respondents requested that the Panel expunge all references to the above-captioned arbitration from Falldin's registration records maintained by the NASD Central Registration Depository ("CRD").

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

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. In either case, the parties have agreed to receive conformed copies of the award while the originals remain on file with NASD Dispute Resolution ("NASD").

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Morgan Stanley DW, Inc., is liable for and shall pay to Claimant, Scott Friedman, the sum of Eight Thousand One Hundred Ninety Five Dollars and Fifty Two (\$8,195.52) in compensatory damages as a result of the failed trade on November 22, 2004;

2. Respondent, Morgan Stanley DW, Inc., is liable for and shall pay to Claimant, Scott Friedman, interest on the above-stated sum at the rate of 4% per annum, from and including November 23, 2004, through and including the date of service of this Award;
3. Claimant's claims, each and all, asserted against Respondent John Eric Falldin and denied and dismissed with prejudice;
4. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent, John Eric Falldin's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent, John Eric Falldin, 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 arbitration panel has made the following affirmative findings of fact:

- John Eric Falldin, the registered person, was not involved in the alleged investment related sales practice violation;
5. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, including punitive damages are denied with prejudice; and
  6. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys' fees.

### **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 = \$ 300

### **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. In this matter, the member firm is Morgan Stanley DW, Inc.

Member surcharge	= \$ 1,700
Pre-hearing process fee	= \$ 750
Hearing process fee	= \$ 2,750

### **Forum Fees and Assessments**

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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) Decision on discovery-related motions on the papers by the Panel x \$600	= \$ 600
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Claimant submitted a Motion for Testimonial Deposition on or about August 8, 2006.

One (1) Pre-hearing session with Panel x \$ 1,125	= \$ 1,125
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Pre-hearing conference:	June 12, 2006	1 session
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Four (4) Hearing sessions with Panel x \$ 1,125	= \$ 4,500
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Hearing Dates:	August 22, 2006	2 sessions
	August 23, 2006	2 sessions

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Total Forum Fees	= \$ 6,225
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The Arbitration Panel has assessed \$ 3,112.50 of the forum fees to Scott Friedman.

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**FEE SUMMARY**

Claimant, Scott Friedman, is liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 3,112.50
Total Fees	= \$ 3,412.50
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 1,987.50

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

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 3,112.50
Total Fees	= \$ 8,312.50
Less payments	= \$ 8,400.00
Balance Refunded By NASD Dispute Resolution	= \$ 87.50

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

**ARBITRATION PANEL**

Lawrence R. Commers, Esq. - Public Arbitrator, Presiding Chair  
Douglas G. Plank - Public Arbitrator  
MaryPat Jahnke - Non-Public Arbitrator

Concurring Arbitrators:

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Lawrence R. Commers, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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Douglas G. Plank  
Public Arbitrator

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Signature Date

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MaryPat Jahnke  
Non-Public Arbitrator

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Signature Date

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2/30/06  
Date of Service (NASD use only)

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Lawrence R. Commers, Esq.  
Public Arbitrator, Presiding Chair

8-28-06  
Signature Date

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Douglas G. Plank  
Public Arbitrator

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