

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

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In the Matter of the Arbitration Between:

Michael Keane (Claimant) vs. Morgan Stanley DW, Inc. and John McGrane (Respondents)

Case Number: 06-00676

Hearing Site: Newark, New Jersey

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

**REPRESENTATION OF PARTIES**

Claimant Michael Keane hereinafter referred to as "Claimant": Devanshu L. Modi, Esq., Lyon, Glassman, Leites & Modi, LLC, Florham Park, NJ.

Respondents Morgan Stanley DW, Inc. ("Morgan Stanley") and John McGrane ("McGrane") hereinafter collectively referred to as "Respondents": John J. Montone, Esq., Morgan Stanley DW, Inc., Purchase, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: February 9, 2006.

Claimant signed the Uniform Submission Agreement: February 8, 2006.

Joint Statement of Answer filed by Respondents on or about: April 4, 2006.

Morgan Stanley signed the Uniform Submission Agreement: April 4, 2006.

McGrane signed the Uniform Submission Agreement: March 30, 2006.

**CASE SUMMARY**

Claimant asserted the following causes of action: suitability, breach of fiduciary duty, negligence, failure to supervise, breach of contract, and misrepresentations. The causes of action relate to unspecified class B equity growth mutual funds.

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 an amount not less than \$165,000.00, punitive damages in an amount not less than \$165,000.00, costs, recovery of all commissions, concessions, sales credits, markups or markdowns, and profits earned by Respondents, lost income, costs and loss of investment profits, and such other and further relief as the Panel may deem just and appropriate.

Respondents requested dismissal of the Statement of Claim in its entirety, expungement of this matter from McGrane's CRD record, costs, and such other and further relief as the Panel deems just and appropriate.

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

On October 24, 2006 a pre-hearing conference was held on Respondents' Motion to Dismiss ("Motion"). The Panel reviewed all submissions and heard all oral arguments regarding the Motion. After due deliberation, and by Order dated October 24, 2006, the Panel granted the Motion.

By letter dated November 14, 2006 Respondents notified NASD Dispute Resolution that Respondents withdrew their Requests for Expungement and for Costs.

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, the testimony and evidence presented at the October 24, 2006 pre-hearing conference, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are dismissed in their entirety.
2. Any and all relief not specifically addressed herein, including punitive damages, 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	= \$	300.00
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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

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

January 23-25, 2007 adjournment by Claimant	=	WAIVED
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**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:

Two (2) Pre-hearing sessions with Panel @ \$1,125.00	= \$ 2,250.00
Pre-hearing conference: June 23, 2006 1 session	
October 24, 2006 1 session	
<hr/> Total Forum Fees	<hr/> = \$ 2,250.00

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

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 1,125.00
Total Fees	= \$ 1,425.00
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Respondent Morgan Stanley is solely liable for:

Member Fees	= \$ 5,200.00
Total Fees	= \$ 5,200.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally liable for:

Forum Fees	= \$ 1,125.00
Total Fees	= \$ 1,125.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 1,125.00

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

**ARBITRATION PANEL**

James M. Rhodes	-	Public Arbitrator, Presiding Chairperson
Margaret Leggett Tarver, Esq.	-	Public Arbitrator
David L. Becker, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

James M. Rhodes  
James M. Rhodes  
Public Arbitrator, Presiding Chairperson

11/22/06  
Signature Date

Margaret Leggett Tarver, Esq.  
Margaret Leggett Tarver, Esq.  
Public Arbitrator

Signature Date

David L. Becker, Esq.  
David L. Becker, Esq.  
Non-Public Arbitrator

Signature Date

November 27, 2006  
Date of Service (For NASD Dispute Resolution use only)


**ARBITRATION PANEL**

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Margaret Leggett Tarver, Esq.	-	Public Arbitrator
David L. Becker, Esq.	-	Non-Public Arbitrator

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