## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GABRIEL F. NAGY,	
Plaintiff,	
V.	CIVIL ACTION NO. 09-3995
HARRIS M. DE WESE, et al.,	
Defendants.	

## ORDER

AND NOW, this \_\_\_\_\_ day of April, 2010, upon consideration of the motion to dismiss Count III of the first amended complaint filed by defendant Morgan Stanley Smith Barney, LLC (docket no. 19); defendant John Jason Bish's motion for judgment on the pleadings as to Count III (docket no. 20); the motion for judgment on the pleadings as to Count II of the first amended complaint filed by defendants Harris DeWese and Compass Capital Partners, Ltd. (docket no. 22); plaintiff's responses to the defendants' motions; and defendant Morgan Stanley Smith Barney's reply thereto, **IT IS HEREBY ORDERED** that

- (1) the motion of defendants Harris DeWese and Compass Capital Partners, Ltd. for judgment on the pleadings as to Count II (docket no. 22) is **DISMISSED AS** MOOT;
- (2) defendant Morgan Stanley Smith Barney's motion to dismiss Count III (docket no. 19) is GRANTED IN PART AND DENIED IN PART. The motion is DENIED to the extent that the claim seeks to recover for breach of fiduciary duties owed to the Compass Capital Partners Ltd. Defined Benefit Retirement

Plan (the "Plan"). The motion is **GRANTED** to the extent that the claim seeks to recover for breach of fiduciary duties owed to the Plan's participants;

(3) defendant John Jason Bish's motion for judgment on the pleadings as to Count III(docket no. 20) is **DISMISSED AS MOOT**.

s/ William H. Yohn Jr., Judge William H. Yohn Jr., Judge