

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Terry Guyer, Claimant v. Morgan Stanley Dean Witter, Christopher Frank and Carrie Austin,
Respondents

Case Number: 00-00489

Hearing Site: San Francisco, California

REPRESENTATION OF PARTIES

For Claimant:

Timothy A. Canning, Esq.
Novato, California

For Respondents:

Wendy R. Robinson, Esq.
Morgan Stanley Dean Witter
San Francisco, California

CASE INFORMATION

Statement of Claim filed on or about: February 1, 2000

Claimant's Uniform Submission Agreement filed on or about: March 20, 2000

Joint Statement of Answer filed by Respondents Morgan Stanley Dean Witter ("Dean Witter"),
Christopher Frank and Carrie Austin: May 1, 2000

Respondent Dean Witter's Uniform Submission Agreement signed: May 1, 2000

Respondent Christopher Frank's Uniform Submission Agreement signed: April 28, 2000

CASE SUMMARY

Claimant alleged the following claims with respect to his investment in National Semiconductor stock: 1) Breach of Fiduciary Duty; 2) Negligence; and 3) Breach of Contract.

Respondents denied Claimant's allegations of wrongdoing and denied any liability to Claimant.

RELIEF REQUESTED

Claimant requested:

1. Damages in the amount of \$15,000.00;
2. Reimbursement for the customary costs associated with bringing this matter to arbitration; and
3. Punitive damages.

Respondents requested that Claimant's Claim be dismissed in its entirety and that the Respondents be awarded their costs and expenses incurred in this matter.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Carrie Austin did not file with NASD Dispute Resolution, Inc. ("NASD-DR") a properly executed submission agreement. The Presiding Arbitrator determined that Respondent Austin is required to submit to arbitration pursuant to the NASD-DR Code of Arbitration Procedure ("the Code") and having answered the claim, appeared and testified at the hearing, is bound by the determination of the Arbitrator on all issues submitted.

AWARD

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

1. The above-referenced dispute was triggered long ago, in March of 1999, by Guyer's attempt to deposit an improperly written check into his Dean Witter account. This fairly common error then was improperly mitigated by both parties and quickly became an expensive and time consuming legal issue.

Guyer used his account at Dean Witter for his proprietary business, not just for investment purposes but also for the deposit of incoming funds from clients and for paying bills and himself. On March 23, 1999, he endorsed a client's check for \$5,464.91 and handed it to a Dean Witter cashier in San Mateo to be put into his account. The written amount on the check was incorrect and on March 25, the Dean Witter office was notified by the main office in San Francisco that the check was 'undepositable'. The Operations Manager for Dean Witter, Carrie Austin, or one of her assistants, put the notice in the 'in' basket of Guyer's broker, Jeff Wilfong.

Wilfong, under oath, testified that he started leaving voice mail messages for Guyer shortly after March 25 to alert his client to the financial problem but that Guyer did not respond. Guyer, also under oath, stated that he did not receive any such messages until almost a month later, in April, when Wilfong did not mention the returned check but notified him that his margin account needed additional funds. Guyer did not wish to deposit additional funds and instructed Dean

4. All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD-DR received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$125.00
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events which gave rise to the dispute, claim, or controversy. Accordingly, the member firm, Dean Witter, is a party and the following fees are assessed:

<u>Member Surcharge</u>	= \$400.00
Total Member Fees	= \$400.00

Forum Fees and Assessments

The Arbitrator assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

(2) Pre-hearing conference sessions with the Arbitrator @ \$450.00/session = \$900.00

Pre-hearing conferences:	October 4, 2000	1 session
	April 5, 2002	1 session

(2) Hearing sessions @ \$450.00/session = \$900.00

Hearings:	April 9, 2002	2 sessions
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Total Forum Fees	= \$1,800.00
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1. The Panel assessed \$900.00 of the forum fees to Claimant.
2. The Panel assessed \$900.00 of the forum fees to Dean Witter.

Administrative Costs

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and other requests.

The parties did not incur administrative costs.

Witter to sell National Semiconductor stock from his account to cover the shortage. These sales were made at a low point and the stock quickly recovered to much higher levels – thus forming the basis for Guyer's claim.

Obviously the entire case rests on failures to communicate by both parties. The Arbitrator does not believe Dean Witter tried very hard to notify Guyer of the check problem – if they tried at all. Guyer, in turn, did not react when the March 31 statement from Dean Witter did not list the deposit, nor did he pursue Dean Witter in early April to make sure his check was received and credited to his account.

Secondly, neither party did much in the way of damage control, to minimize the effects of the 'bounced' check. In fact, subsequent actions by the parties exacerbated the issue:

Claimant – while trying to unravel the mystery of the missing deposit – should have dug up some cash to make up for the missing \$5400 to prevent the forced sale of his stock at an inopportune price.

Respondent should have made a real effort to work with the client to solve the issue and most certainly should not have brought in their legal department in the early stages with their cold, hard-nosed and insulting letter to the client. Customer relations certainly were not high on Respondent's agenda.

Accordingly, all claims by Claimant, including the claims for punitive damages, are dismissed. However, Respondent Dean Witter is solely liable for and shall pay to Claimant the sum of \$3,000.00 to cover all or part of Claimant's legal and administrative costs in this matter.

2. Upon request by all parties, and with the agreement of the presiding arbitrator, all claims against Christopher Frank are dismissed with prejudice based on substantive review and consideration of the evidence. Further, the presiding arbitrator recommends the expungement of all reference to the above captioned arbitration from Respondent Christopher Frank's registration records maintained by the CRD, with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Frank must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

3. All claims by Claimant against Respondent Carrie Austin are dismissed. Further, the presiding arbitrator recommends the expungement of all reference to the above captioned arbitration from Respondent Carrie Austin's registration records maintained by the CRD, with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Austin must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Fee Summary

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 125.00
Forum Fees	= \$ 900.00
<u>Administrative Costs</u>	<u>= \$ 0.00</u>
Total Fees	= \$1,025.00
<u>Less payments</u>	<u>= \$ (575.00)</u>
Balance Due NASD-DR	= \$ 450.00

2. Respondent, Dean Witter, is charged with the following fees and costs:

Member Fees	= \$ 400.00
Forum Fees	= \$ 900.00
<u>Administrative Costs</u>	<u>= \$ 0.00</u>
Total Fees	= \$1,300.00
<u>Less Payments</u>	<u>= \$ (400.00)</u>
Balance Due NASD-DR	= \$ 900.00

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

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ARBITRATION PANEL

Ferdinand Schoch

Public Arbitrator, Presiding Chair

Presiding Arbitrator's Signature

Ferdinand Schoch
Public Arbitrator, Presiding Chair

Signature Date

Date of Service

ARBITRATION PANEL

Ferdinand Schoch

Public Arbitrator, Presiding Chair

Presiding Arbitrator's Signature

Ferdinand Schoch

Ferdinand Schoch

Public Arbitrator, Presiding Chair

4/18/02

Signature Date

4/9/02

Date of Service

4-24-02/MC

Date of Service