

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Lisa A. Harpenau, Claimant v. Morgan Stanley Dean Witter, William Joseph Jones and Charles Schwab & Co., Inc., Respondents

Case Number: 00-03869

Hearing Site: San Francisco, California

REPRESENTATION OF PARTIES

For Claimant:

Thomas D. Mauriello, Esq.
San Rafael, California

For Respondents Morgan Stanley Dean Witter
and William Joseph Jones:

Anne T. Cooney, Esq.
Morgan Stanley
San Francisco, California

For Respondent Charles Schwab & Co., Inc.:

Mauricio S. Beugelmans, Esq.
Charles Schwab & Co., Inc.
San Francisco, California

CASE INFORMATION

Statement of Claim filed on or about: August 30, 2000

Claimant's Uniform Submission Agreement signed: July 29, 2000

Joint Statement of Answer filed by Respondents Dean Witter Reynolds Inc. (also known as Morgan Stanley Dean Witter ("MSDW")) and William Joseph Jones, on or about: November 21, 2000

Statement of Answer filed by Respondent, Charles Schwab & Co., Inc. ("Schwab"), on or about: November 3, 2000

CASE SUMMARY

Referencing investments in various securities, Claimant alleged the following claims against MSDW: 1) Breach of Contract; 2) Negligence; and 3) Breach of Fiduciary Duty. Claimant alleged the following claims against Schwab: 1) Negligence; and 2) Breach of Fiduciary Duty.

Respondents denied Claimant's allegations of wrongdoing and denied any liability to Claimant. Respondents also asserted affirmative defenses.

RELIEF REQUESTED

Claimant requested:

1. Compensatory damages against MSDW and Jones, jointly and severally, in the amount of \$40,269.94 representing the losses on the seven unsuitable stock investments (including commissions and transactions fees for the purchases and sales of these stocks);
2. Compensatory damages against MSDW and Schwab, jointly and severally, in the amount of \$33,138.14 representing the damages suffered by Ms. Harpenau from the negligent transfer of 1,500 Allied Signal shares to her Schwab account;
3. Costs of suit, including reasonable attorneys' fees in an amount to be proved at the arbitration hearing;
4. An award of exemplary or punitive damages;
5. An award of prejudgment interest at the rate of 10%, running from July 14, 1998 to the date of the award; and
6. Such other relief as the arbitrators may find appropriate under the circumstances.

Respondent Schwab requested:

1. Dismissal of Claimant's claims in their entirety;
2. An award of costs and fees; and
3. Such other relief as may be just, proper and provided by law.

Respondents MSDW and Jones requested dismissal of Claimant's claims in their entirety.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents MSDW and Jones did not file with NASD Dispute Resolution, Inc. ("NASD-DR") properly executed submission agreements but are 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, are bound by the determination of the Panel on all issues submitted.

On or about September 4, 2001, the Panel granted Respondent Schwab's Motion to Dismiss and dismissed Claimant's claims against Schwab.

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

The Panel believes that Respondent Jones' record keeping and the Dean Witter Reynolds branch manager's oversight fell short of the requirements of the Morgan Stanley compliance manual dated 12/13/2001 and received as Claimant's exhibit #30. The Panel also believes that the customer's signature should be required on the Morgan Stanley New Account Form.

AWARD

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

- 1) Respondents MSDW and Jones are jointly and severally liable for and shall pay to Claimant, Harpenau, the sum of \$12,000.00.
- 2) Claimant's claims for exemplary or punitive damages are denied.
- 3) Each party shall bear its own costs, including attorney's fees.
- 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	= \$225.00
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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 firms, MSDW and Schwab, are parties and the following fees are assessed:

Member Surcharge	= \$1,000.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	<u>= \$1,500.00</u>
Total Member Fees	= \$3,100.00

Forum Fees and Assessments

The Panel 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:

(4) Pre-hearing conference sessions with the Panel @ \$750.00/session = \$3,000.00

Pre-hearing conferences:	April 10, 2001	1 session
	July 31, 2001	1 session
	September 4, 2001	1 session
	December 17, 2001	1 session

(5) Hearing sessions @ \$750.00/session = \$3,750.00

Hearings:	February 12, 2002	2 sessions
	February 13, 2002	3 sessions

Total Forum Fees = **\$6,750.00**

1. The Panel assessed the \$6,750.00 in forum fees jointly and severally to MSDW and Jones.

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.

Fee Summary

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

Initial Filing Fee	= \$ 225.00
<u>Administrative Costs</u>	= \$ 0.00
Total Fees	= \$ 225.00
<u>Less Payments</u>	= \$(975.00)
Refund Due Claimant	= \$ 750.00

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

Member Fees	= \$ 3,100.00
<u>Administrative Costs</u>	= \$ 0.00
Total Fees	= \$ 3,100.00
<u>Less Payments</u>	= \$(3,100.00)
Balance Due NASD-DR	= \$ 0.00

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3. Respondent, MSDW, is charged with the following fees and costs:

Member Fees	= \$ 3,100.00
<u>Administrative Costs</u>	= \$ 0.00
Total Fees	= \$ 3,100.00
<u>Less Payments</u>	= \$(3,100.00)
Balance Due NASD-DR	= \$ 0.00

4. Respondents, MSDW and Jones, are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 6,750.00
Total Fees	= \$ 6,750.00
<u>Less Payments</u>	= \$ (0.00)
Balance Due NASD-DR	= \$ 6,750.00

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.

ARBITRATION PANEL

Martin J. Haley, Esq.	-	Public Arbitrator, Presiding Chair
Anthony T. Ellis	.	Public Arbitrator
Donald S. Dutton	.	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Martin J. Haley, Esq.
Chair, Public Arbitrator

3-15-02

Signature Date

Anthony T. Ellis
Public Arbitrator

Signature Date

Donald S. Dutton
Non-Public Arbitrator

Signature Date

3/19/02

Date of Service

ARBITRATION PANEL

Martin J. Haley, Esq.	-	Public Arbitrator, Presiding Chair
Anthony T. Ellis	-	Public Arbitrator
Donald S. Duerson	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Martin J. Haley, Esq.
Chair, Public Arbitrator

Signature Date

Anthony T. Ellis
Public Arbitrator

Signature Date


Donald S. Duerson
Non-Public Arbitrator

3-15-02
Signature Date

3/19/02
Date of Service