

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

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In the Matter of the Arbitration Between:

Andrew J. Tine and Haese, LLC, (Claimants) vs. Morgan Stanley Dean Witter Online Inc.,  
(Respondents)

Case Number: 00-04219

Hearing Site: Boston, Massachusetts

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**REPRESENTATION OF PARTIES**

Claimants, Andrew J. Tine ("Tine") and Haese, LLC ("Haese"), hereinafter collectively referred to as "Claimants": Rick Holland, Esq., Haese, LLC, Boston, MA.

Respondent, Morgan Stanley Dean Witter Online Inc., hereinafter referred to as "Respondent": Eunice E. Lee, Esq., Bingham McCutchen LLP (formerly Binham Dana LLP), Boston, MA.

**CASE INFORMATION**

Statement of Claim filed on or about: September 25, 2000.

Amended Statement of Claim filed on or about: September 14, 2001.

Reply to Respondent's Response to the Amended Statement of Claim filed by Claimant on or about: December 10, 2001.

Tine signed the Uniform Submission Agreement: September 25, 2000.

Haese signed the Uniform Submission Agreement: September 25, 2000.

Statement of Answer filed by Respondent on or about: December 22, 2000.

Response to Amended Statement of Claim filed by Respondent on or about: December 3, 2001.

Respondent signed the Uniform Submission Agreement: December 11, 2000.

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of fiduciary duties; fraud and deceit; conversion; negligent supervision and management; and violation of Massachusetts General Law Chapters 93A and 110A. Claimants' claim involved the stock of Audible, Inc.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: each of the counts of the Statement of Claim fail to state a claim upon which relief can be granted; all investment decisions were made by Claimants without the advice or recommendation of Respondent; Claimants may not maintain a claim against Respondent because their negligence exceeded any negligence of Respondent; Claimants cannot maintain an action for fraud against Respondent in that they have failed to demonstrate that they justifiably relied upon Respondent; the Statement of Claim fails to state the circumstances constituting alleged fraud with particularity; Claimants are experienced and sophisticated investors that were in a position to assess the risks associated with the transactions that they made; Respondent at all times acted in good faith toward Claimants and acted pursuant to Claimants' specific instructions; any damages suffered by Claimants were the result of Claimants' own actions or the actions of parties other than Respondent; Respondent at all times acted in good faith and maintained and enforced a reasonable system of supervision and internal controls over its employees; to the extent Claimants assert misrepresentations, the alleged misrepresentations were not material and would not have been relied upon by a reasonable investor; the actions of Respondent were not the proximate cause of Claimants' alleged losses; Claimants through their actions and deeds have waived their right to maintain this action against Respondent; and Claimants failed to mitigate their damages and therefore cannot recover from Respondent.

#### **RELIEF REQUESTED**

Claimants requested:

- a. An Award in their favor in the amount of \$47,487.50, exclusive of attorneys' fees, interest, and costs;
- b. An Award of punitive damages in the amount of \$94,975.00, pursuant to Massachusetts General Law Chapter 93A; and
- c. An Award of interest, attorneys' fees, and costs.

Respondent requested that Claimants' claims be dismissed.

#### **OTHER ISSUES CONSIDERED AND 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.

### **AWARD**

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

1. Respondent be and hereby is liable for and shall pay to Claimants the sum of \$27,500.00 as compensatory damages, plus interest in the amount of \$3,250.00.
2. Claimants' request for punitive damages is hereby denied.
3. All other requests for relief are hereby 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

#### **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, Morgan Stanley Dean Witter Online Inc. is a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

#### **Forum Fees and Assessments**

The 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) Pre-hearing session with Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference: August 7, 2001	1 session

Four (4) Hearing sessions x \$1,125.00		= \$4,500.00
Hearing Dates:	July 17, 2002	2 sessions
	July 18, 2002	2 sessions
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Total Forum Fees		= \$5,625.00

1. The Panel has assessed \$2,812.50 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$2,812.50 of the forum fees Respondent.

**Fee Summary**

1. Claimants be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= <u>\$2,812.50</u>
Total Fees	= \$3,112.50
<u>Less payments</u>	= <u>\$1,425.00</u>
Balance Due NASD Dispute Resolution	= \$1,687.50
2. Respondent be and hereby is solely liable for:

Member Fees	= \$4,600.00
<u>Forum Fees</u>	= <u>\$2,812.50</u>
Total Fees	= \$7,412.50
<u>Less payments</u>	= <u>\$4,600.00</u>
Balance Due NASD Dispute Resolution	= \$2,812.50

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

**ARBITRATION PANEL**

Carl P. Sherr	-	Non-Public Arbitrator, Presiding Chair
Janice M. Mendes	-	Public Arbitrator
Winthrop G. Dow, Jr.	-	Public Arbitrator

**Concurring Arbitrators' Signatures**



Carl P. Sherr  
Non-Public Arbitrator, Presiding Chair

  
Signature Date

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Janice M. Mendes  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Winthrop G. Dow, Jr.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

August 7, 2002  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

Carl P. Sherr	-	Non-Public Arbitrator, Presiding Chair
Janice M. Mendes	-	Public Arbitrator
Winthrop G. Dow, Jr.	-	Public Arbitrator

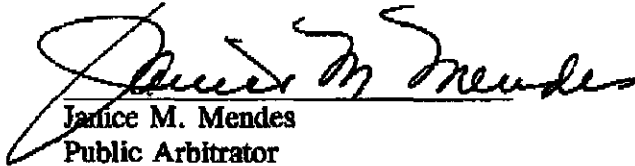
**Concurring Arbitrators' Signatures**

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Carl P. Sherr  
Non-Public Arbitrator, Presiding Chair

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Signature Date

  
Janice M. Mendes  
Public Arbitrator

8/2/02  
Signature Date

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Winthrop G. Dow, Jr.  
Public Arbitrator

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Signature Date

August 7, 2002

Date of Service (For NASD Dispute Resolution use only)

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Carl P. Sherr  
Non-Public Arbitrator, Presiding Chair

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Signature Date

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Janice M. Mendes  
Public Arbitrator

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Signature Date

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Winthrop G. Dow, Jr.  
Public Arbitrator

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Signature Date

August 7, 2002

Date of Service (For NASD Dispute Resolution use only)

  
August 1, 2002