

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Samuel L. Kleinman Trust

Case No. 00-04878

Names of Respondents

Hearing Site: Boca Raton, Florida

Morgan Stanley Dean Witter, Inc.
Joseph Anthony Fezza

REPRESENTATION OF PARTIES

For Samuel L. Kleinman Trust ("Kleinman") hereinafter referred to as "Claimant": Darren C. Blum, Esq., Plantation, Florida.

For Morgan Stanley Dean Witter, Inc. ("Morgan Stanley") and Joseph Anthony Fezza ("Fezza") hereinafter collectively referred to as "Respondents": Allison Barry Doneghey, Vice President, Senior Attorney, Law Department, Morgan Stanley Dean Witter, Inc., Sarasota, Florida.

CASE INFORMATION

Statement of Claim filed on or about: November 2, 2000.

Claimant signed the Uniform Submission Agreement: December 4, 2000.

Statement of Answer filed by Respondents on or about: January 17, 2001.

Respondents Morgan Stanley and Fezza did not file executed Uniform Submission Agreements.

CASE SUMMARY

Claimant asserted the following: 1) Respondents violated Florida Statutes, Chapter 517; 2) Respondents breached their agreement with Claimant; 3) Respondents breached their fiduciary duties to Claimant; 4) Respondents made unauthorized trades in Claimant's account; 5) Respondents' conduct constituted common law fraud; 6) Respondents negligently handled Claimant's account; and 7) Respondent Morgan Stanley was negligent in its supervision, hiring and retention of employees. The causes of action relate to the transfer of Claimant's account from another brokerage firm to Respondent Morgan Stanley and to the sale of unspecified securities in Claimant's account to cover a margin call.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: 1) Claimant was fully advised of the risks inherent in his investments and knowingly chose to assume those risks; 2)

transactions were thoroughly discussed with Claimant, were authorized by Claimant, and were effectuated with Claimant's consents; 3) Claimant waived any objections regarding the suitability of any transactions or any losses therefrom; 4) Claimant ratified and approved the subject transactions; 5) Respondents did not make any misrepresentations or omissions of material facts to Claimant; 6) Respondents did not have any intent to defraud Claimant and did not act with any reckless disregard of the financial consequences to Claimant; 7) Claimant is barred from recovery by Claimant's own negligence, contributory negligence or comparative negligence; 8) Claimant failed to mitigate any damages; 9) Claimant's account agreement authorized Respondents to take market action in response to margin calls in Claimant's account; 10) Respondents acted in good faith and exercised reasonable diligence at all times; 11) Claimant's losses were proximately caused by Claimant's own decisions, conduct and/or negligence; 12) all common law tort claims are barred by the Economic Loss Doctrine; 13) Claimant is barred from recovery by the doctrine of in pari delicto; 14) extraordinary market conditions and events not caused by or in the control of Respondents may have existed to cause certain losses alleged by the Claimant; and 15) Respondent Morgan Stanley had reasonable and adequate supervisory procedures which it diligently implemented and followed.

RELIEF REQUESTED

Claimant requested compensatory damages of approximately \$415,997.73, plus interest at the legal rate from the date of purchase or reasonable market return, rescission, punitive damages, attorney's fees, the costs of this proceeding and such other relief as is deemed just and proper.

Respondents requested that all claims be dismissed in their entirety and that all references to this matter be expunged from the NASD Central Registration Depository ("CRD") record of Respondent Fezza.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents Morgan Stanley and Fezza did not file with NASD Dispute Resolution, Inc. properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the undersigned arbitrators (the "Panel") on all issues submitted.

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, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the

issues submitted for determination as follows:

Respondent Morgan Stanley is liable and shall pay to Claimant the sum of \$27,733.33 as compensatory damages, pre-judgment interest specifically excluded.

Respondent Fezza is liable and shall pay to Claimant the sum of \$13,866.67 as compensatory damages, pre-judgment interest specifically excluded.

The Award is based upon Respondents' negligence, lack of communication, improper handling of Claimant's account and Respondent Morgan Stanley's lack of supervision of Respondent Fezza.

Respondent Morgan Stanley is liable and shall pay to Claimant the sum of \$300.00 representing reimbursement of the claim filing fee previously paid by Claimant to NASD Dispute Resolution, Inc.

Respondent Fezza's request for expungement of his CRD record is denied.

Any and all other requests for relief not specifically addressed herein, including Claimant's requests for attorney's fees and punitive damages, are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. 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. In this matter, the member firm is a party.

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

Adjournment Fees

No adjournments were requested during these proceedings.

Forum Fees and Assessments

The panel has the authority to assess 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:

Two (2) Pre-hearing sessions with Panel x \$1,125.00	= \$2,250.00
Pre-hearing conferences: April 5, 2001	1 session
August 15, 2001	1 session
Five (5) Hearing sessions x \$1,125.00	= \$5,625.00
Hearing Dates: August 23, 2001	2 sessions
August 24, 2001	2 sessions
August 27, 2001	1 session

Total Forum Fees	= \$7,875.00
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The panel has assessed the total forum fees of \$7,875.00 to Respondent Morgan Stanley.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during these proceedings.

Fee Summary

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$300.000
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Total Fees	= \$300.00
Less payments	= \$300.00

Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00
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Respondent Morgan Stanley be and hereby is solely liable for:

Member Fees	= \$ 4,600.00
Forum Fees	= \$ 7,875.00

Total Fees	= \$12,475.00
Less payments	= \$4,600.00

Balance Due NASD Dispute Resolution, Inc.	= \$7,875.00
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All balances are due and payable to NASD Dispute Resolution, Inc. immediately upon receipt of the Award by the parties pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

<i>Lawrence M. Green</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Martin Weinberg</i>	-	<i>Public Arbitrator</i>
<i>Beverly B. Kennedy</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

/s/

Lawrence M. Green
Public Arbitrator, Presiding Chair

Signature Date

/s/
Martin Weinberg
Public Arbitrator

Signature Date

/s/
Beverly B. Kennedy
Non-Public Arbitrator

Signature Date

October 8, 2001

Date of Service (For NASD-Dispute Resolution office use only)

ARBITRATION PANEL

Lawrence M. Green	-	Public Arbitrator, Presiding Chair
Martin Weinberg	-	Public Arbitrator
Beverly B. Kennedy	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Lawrence M. Green
Public Arbitrator, Presiding Chair

10-04-01

Signature Date

Martin Weinberg
Public Arbitrator

Signature Date

Beverly B. Kennedy
Non-Public Arbitrator

Signature Date

(Date of Service (For NASD-Dispute Resolution office use only))

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Lawrence M. Green

Public Arbitrator, Presiding Chair

Martin Weinberg

Public Arbitrator

Beverly B. Kennedy

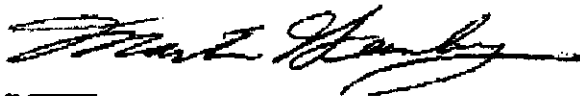
Non-Public Arbitrator

Concurring Arbitrators' Signatures

Lawrence M. Green

Signature Date

Public Arbitrator, Presiding Chair



10/5/01

Martin Weinberg

Signature Date

Public Arbitrator

Beverly B. Kennedy

Signature Date

Non-Public Arbitrator

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Concurring Arbitrators' Signatures

Lawrence M. Green
Public Arbitrator, Presiding Chair

Signature Date

Martin Weinberg
Public Arbitrator

Signature Date



Beverly B. Kennedy
Non-Public Arbitrator

Oct 5, 2001

Signature Date

Date of Service (For NASD-Dispute Resolution office use only)