

**AWARD**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between

Name of Claimants

Stanley Crume and Frances Crume

and

00-05045  
Minneapolis, Minnesota

Name of Respondent

Discover Brokerage Direct n/k/a Morgan Stanley Dean Witter Online, Inc.

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**REPRESENTATION OF PARTIES**

Stanley Crume and Frances Crume ("**Claimants**") were represented by Stanley Crume.

Discover Brokerage Direct n/k/a Morgan Stanley Dean Witter Online, Inc. ("**Respondent**") was represented by Robert T. Sullwold, Esq., Sullwold & Hughes, San Francisco, California.

**CASE INFORMATION**

The Statement of Claim was filed on or about November 13, 2000. Submission Agreement of Claimants Stanley Crume and Frances Crume was signed on November 6, 2000.

Statement of Answer was filed by Respondent Discover Brokerage Direct n/k/a Morgan Stanley Dean Witter Online, Inc. on or about February 5, 2001. Submission Agreement of Respondent Discover Brokerage Direct n/k/a Morgan Stanley Dean Witter Online, Inc. was signed on February 28, 2001.

**CASE SUMMARY**

Claimants alleged that they were unable to reach a broker via telephone or the internet contrary to the promotional materials of Respondent. It was alleged that as a result of their inability to reach a broker and entering sell orders, they incurred substantial losses in their investments in Sharper Image, Iomega and FPAM Medical Management.

Respondent denied the allegations set forth in the Statement of Claim. Respondent specifically stated that it was not experiencing system problems with its website on the day in question. It was further stated that Respondent's records show that Claimants repeatedly accessed the website that day. Respondent also stated that it would be liable for any losses "resulting from a cause over which they have no control," including but not limited to "failure of electronic or mechanical equipment or

communication lines, telephone or other problems with access to the internet..." under the terms of the Customer Agreement.

### **RELIEF REQUESTED**

Claimants requested an award of compensatory damages in the amount of \$113,666.06, costs in the total amount of \$3,925.00 and punitive damages in the amount of five times the losses or the maximum allowed by law.

Respondent requested an award dismissing the Statement of Claim and an award of its costs, including reasonable attorneys' fees.

### **OTHER ISSUES CONSIDERED & 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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution, Inc. (the "NASD").

### **AWARD**

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

1. The claims asserted in this matter shall be and hereby are dismissed.
2. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

### **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

### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is Discover Brokerage Direct n/k/a Morgan Stanley Dean Witter Online, Inc.

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

### **Adjournment Fees**

Adjournment requested during these proceedings:

October 8 and 9, 2001 Hearing Dates, adjournment resulting from the administrative stay of proceedings granted by NASD Dispute Resolution, Inc. following the September 11, 2001 World Trade Center attack.

= \$ 0.00

### **Forum Fees and Assessments**

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session(s) with Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference(s): June 26, 2001	1 session

Two (2) Hearing sessions x \$1,125.00	= \$2,250.00
Hearing Date(s): April 9, 2002	2 sessions

Total Forum Fees	= \$3,375.00
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The Arbitration Panel has assessed \$1,125.00 of the forum fees to Stanley Crume and Frances Crume.

The Arbitration Panel has assessed \$2,250.00 of the forum fees to Discover Brokerage Direct n/k/a Morgan Stanley Dean Witter Online, Inc.

**Fee Summary**

Claimants, Stanley Crume and Frances Crume, shall be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$1,125.00
Total Fees	= \$1,425.00
<u>Less payments</u>	= \$1,425.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

Respondent, Discover Brokerage Direct n/k/a Morgan Stanley Dean Witter Online, Inc., shall be and hereby is liable for:

Member Fees	= \$4,600.00
<u>Forum Fees</u>	= \$2,250.00
Total Fees	= \$6,850.00
<u>Less payments</u>	= \$4,600.00
Balance Due NASD Dispute Resolution, Inc.	= \$2,250.00

**All balances are due to NASD Dispute Resolution, Inc.**

**ARBITRATION PANEL**

Douglas G. Plank - Public Arbitrator, Presiding Chair  
Wendy A. Sacha - Public Arbitrator  
Gerald J. Shaughnessy - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Douglas G. Plank  
Douglas G. Plank  
Public Arbitrator, Presiding Chair

April 16, 2002  
Signature Date

/s/ Wendy A. Sacha  
Wendy A. Sacha  
Public Arbitrator

April 18, 2002  
Signature Date

/s/ Gerald J. Shaughnessy  
Gerald J. Shaughnessy  
Non-Public Arbitrator

April 17, 2002  
Signature Date

04/18/02 TUE 10:48 FAX

NASD REGULATION

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Attn: Ed Anderson  
FAX # 312/236-9839NASD Dispute Resolution, Inc.  
Arbitration No. 00-05045  
Award Page 4 of 4**Fee Summary**

Claimants, Stanley Curne and Frances Curne, shall be and hereby are jointly and severally liable for:

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Wendy A. Sacha - Public Arbitrator  
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Public Arbitrator, Presiding Chair

4/16/02  
Signature Date

\_\_\_\_\_  
Wendy A. Sacha  
Public Arbitrator

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

\_\_\_\_\_  
Gerald J. Shaughnessy  
Non-Public Arbitrator

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Signature Date

04/16/02 TUE 10:55 FAX

NASD REGULATION

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NASD Dispute Resolution, Inc.  
 Arbitration No. 00-05045  
 Award Page 4 of 4

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 Wendy A. Sacha - Public Arbitrator  
 Gerald J. Shaughnessy - Non-Public Arbitrator

Concurring Arbitrators:

Douglas G. Plank  
 Public Arbitrator, Presiding Chair

Signature Date

Wendy A. Sacha  
 Wendy A. Sacha  
 Public Arbitrator

4/18/02  
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Gerald J. Shaughnessy  
 Non-Public Arbitrator

Signature Date

NASD Dispute Resolution, Inc.  
Arbitration No. 00-05045  
Award Page 4 of 4

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Wendy A. Sacha - Public Arbitrator  
Gerald J. Shaughnessy - Non-Public Arbitrator

Concurring Arbitrators:


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Public Arbitrator, Presiding Chair

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Signature Date

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Signature Date