

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Bernard Schwartz, Claimant v. Morgan Stanley Dean Witter, Inc. and Mace Tamse,
Respondents

Case Number: 01-00077

Hearing Site: Boca Raton, Florida

REPRESENTATION OF PARTIES

For Bernard Schwartz, hereinafter referred to as "Claimant": Albert A. Rapoport, Esq., Boca Raton, Florida.

For Respondents Morgan Stanley Dean Witter, Inc. ("MSDW") and Mace Tamse ("Tamse"):
Allison Barry Doneghey, Esq., MSDW, Sarasota, Florida.

CASE INFORMATION

Statement of Claim filed on or about: January 8, 2001.

Claimant's Uniform Submission Agreement signed: December 4, 2000.

Statement of Answer filed by Respondents MSDW and Tamse on or about: March 20, 2001.

Uniform Submission Agreement signed by Respondent: April 2, 2001.

Respondent Tamse did not file an executed Uniform Submission Agreement.

CASE SUMMARY

Claimant alleged the following causes of action: 1) violation of Florida Civil Theft and Securities laws; 2) fraud; 3) negligent misrepresentation; 4) breach of fiduciary duty; 5) breach of implied covenant of good faith and fair dealing; 6) failure to supervise; and 7) unsuitability. Claimant also alleged that Respondents' conduct violated the rules and regulations of the NASD. The causes of action relate to Respondents' investments in Tampa Florida Health Systems Municipal Bonds and Hillsboro Bonds.

Unless specifically admitted in their Statement of Answer, Respondents MSDW and Tamse denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested in its Statement of Claim: 1) \$100,000 of compensatory damages; 2) \$400,000 of punitive damages; 3) costs; 4) attorneys' fees; and 5) interest.

Respondent requested a dismissal of all claims.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Tamse did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration, but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, is bound by the determination of the Panel on all issues submitted.

At the evidentiary hearing, Claimant's attorney requested an opportunity to submit a brief regarding the definition of a "fiduciary" and whether a broker has a "legal fiduciary relationship" with its customers. The Panel gave both parties until April 26, 2002 to submit said briefs.

The parties 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, testimony, and evidence presented at the hearing, the undersigned arbitrators (the "Panel") decided in full and final resolution of the issues submitted for determination as follows:

- 1) The Panel finds in favor of Respondents on all counts. Claimant failed to prove any of the causes of action he alleged in his complaint.
- 2) Claimant's request for punitive damages is denied.
- 3) All other relief requested and not expressly granted is denied.

The Panel recommends the expungement of all references to the above captioned arbitration from Respondent Schwartz's Form U-4 and his registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Schwartz must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 300.00
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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 that gave rise to the dispute, claim, or controversy. The member firm MSDW is a party to this dispute and was a NASD member at the time the following fees were assessed:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 600.00
Hearing Process Fee	= \$ 2,500.00
Total Member Fees	= \$ 4,600.00

Adjournment Fees

No adjournment fees are assessed.

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:

One (1) Pre-hearing conference session with the Panel @ \$1,125.00	= \$ 1,125.00
Pre-hearing conference: June 21, 2001 1 session	
Four (4) Hearing sessions with the Panel @ \$1,125.00	= \$ 4,500.00
Hearing: April 18, 2002 2 sessions	
April 19, 2002 2 sessions	
Total Forum Fees	= \$ 5,625.00

The Panel assessed \$2,812.50 of the forum fees to Claimant.

The Panel assessed \$1,406.25 of the forum fees to Respondent MSDW.

The Panel assessed \$1,406.25 of the forum fees to Respondent Tamse.

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.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 2,812.50
Total Fees	= \$ 3,112.50
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,687.50

MSDW is charged with the following fees and costs:

Forum Fees	= \$ 1,406.25
Member Fees	= \$ 4,600.00
Total Fees	= \$ 6,006.25
Less payments	= \$ 4,600.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,406.25

Tamse is charged with the following fees and costs:

Forum Fees	= \$ 1,406.25
Total Fees	= \$ 1,406.25
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,406.25

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

ARBITRATION PANEL

<i>Herbert Branitsky, Esq.</i>	-	<i>Public Presiding Chair</i>
<i>Shirley A. Castle</i>	-	<i>Non- Public Arbitrator</i>
<i>Paul W. Sterman, CPA</i>	-	<i>Public Arbitrator</i>

Concurring Arbitrators' Signatures

_____/s/
Herbert Branitsky, Esq.
Chair, Public Arbitrator

Signature Date

_____/s/
Paul W. Sterman, CPA
Public Arbitrator

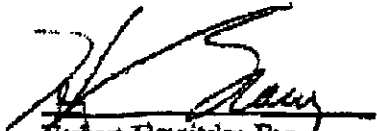
Signature Date

_____/s/
Shirley A. Castle
Non-Public Arbitrator

Signature Date

May 23, 2002
Date of Service

Concurring Arbitrators' Signatures


Herbert Bronitaky, Esq.
Chair, Public Arbitrator

Paul W. Sterman, CPA
Public Arbitrator

Shirley A. Castle
Non-Public Arbitrator


Signature Date

Signature Date

Signature Date

Date of Service

Concurring Arbitrators' Signatures

Herbert Brantisky, Esq.
Chair, Public Arbitrator

Paul W. Sterm
Paul W. Sterm, CPA
Public Arbitrator

Shirley A. Castle
Non-Public Arbitrator

Signature Date

May 16, 2002
Signature Date

Signature Date

Date of Service

NASD Dispute Resolution, Inc.

Arbitration No. 01-00077

Award Page 5 of 5

Concurring Arbitrators' Signatures

Herbert Brantitsky, Esq.
Chair, Public Arbitrator

Signature Date

Paul W. Sterman, CPA
Public Arbitrator

Signature Date



Shirley A. Castle
Non-Public Arbitrator

5-15-02
Signature Date

Date of Service