

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

Frank Papa, (Claimant) vs. Morgan Stanley Dean Witter and Ann Allen, (Respondents)

Case Number: 01-00521

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant, Frank Papa, hereinafter referred to as "Claimant": Guy R. Cirincione, Lincroft, NJ.

Respondents, Morgan Stanley Dean Witter ("MSDW") and Ann Allen ("Allen"), hereinafter collectively referred to as "Respondents": Paul G. Thomas, Esq., First Vice President and Senior Attorney, Morgan Stanley Dean Witter, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: January 29, 2001.

Claimant signed the Uniform Submission Agreement: January 27, 2001.

Joint Statement of Answer filed by Respondents on or about: April 24, 2001.

MSDW signed the Uniform Submission Agreement: April 23, 2001.

Allen signed the Uniform Submission Agreement: April 25, 2001.

**CASE SUMMARY**

Claimant asserted the following causes of action: unsuitability; violation of client instructions; disregard for client risk profile; misrepresentations; misleading statements; churning; lack of proper supervision; violation of discretionary authority; and violation of NASD procedures. Claimant's claim involved a variety of stocks and corporate bonds.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state a claim upon which relief may be granted; Respondents did not act with any intent to defraud Claimant or with any willful disregard for him; Respondents did not misrepresent or omit material facts; the actions or inactions of Claimant, not Respondents, caused the alleged losses of which Claimant complains; Claimant failed to mitigate his alleged damages; Claimant ratified the transactions at issue; Claimant waived the claims asserted herein; Claimant, by his conduct and under all of the circumstances of this case, is estopped from asserting the claims herein; events occurred, not caused by Respondents, which constituted superseding or intervening causes of some or all of the alleged losses of which Claimant

complains; any and all duties owed to Claimant were fully and faithfully performed; Respondents had no fiduciary duty to Claimant as a matter of law; there was no negligence by Respondents in the handling of Claimant's account; MSDW had in place adequate supervisory procedures which it reasonably and diligently implemented and followed; punitive or exemplary damages are not recoverable by Claimant as a matter of law; and Claimant's claims are barred in whole or in part by the applicable statutes of limitations.

#### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$200,000.00, plus punitive damages in the amount of \$200,000.00, lost interest in the amount of \$75,000.00, costs, and attorneys' fees.

Respondents requested that the Statement of Claim be dismissed in its entirety, and that the costs of this proceeding be assessed against Claimant.

#### **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. Respondents be and hereby are jointly and severally liable for and shall pay to Claimant the sum of \$175,000.00 as compensatory damages, plus interest at the rate of 9% beginning to accrue five business days from the date of service of this Award until date of payment.
2. MSDW be and hereby is solely liable for and shall pay to Claimant the sum of \$300.00, to reimburse Claimant for the filing fee previously paid to NASD Dispute Resolution, Inc.
3. Claimant's request for punitive damages is hereby denied.
4. All other requests for relief are hereby 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

#### **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 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:

Two (2) Pre-hearing sessions with Panel x \$1,125.00 = \$2,250.00

Pre-hearing conferences: August 7, 2001 1 session  
December 18, 2001 1 session

Five (5) Hearing sessions x \$1,125.00 = \$5,625.00

Hearing Dates: March 7, 2002 2 sessions  
March 8, 2002 2 sessions  
March 27, 2002 1 session

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Total Forum Fees = \$7,875.00

The Panel has assessed all of the forum fees against MSDW.

**Fee Summary**

1. Claimant be and hereby is solely liable for:

<u>Initial Filing Fee</u>	= \$ 300.00
<u>Total Fees</u>	= \$ 300.00
<u>Less payments</u>	= \$ 1,425.00
<u>Refund Due Claimant</u>	= \$ 1,125.00

*As stated in the "Award" section above, MSDW is liable and shall reimburse Claimant for the \$300.00 filing fee.*

2. MSDW be and hereby is solely liable for:

<u>Member Fees</u>	= \$ 4,600.00
<u>Forum Fees</u>	= \$ 7,875.00
<u>Total Fees</u>	= \$12,475.00
<u>Less payments</u>	= \$ 4,600.00
<u>Balance Due NASD Dispute Resolution, Inc.</u>	= \$ 7,875.00

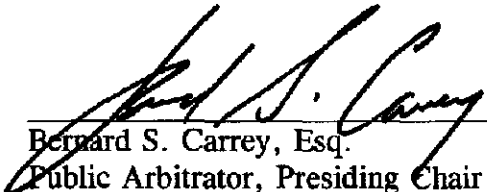
All balances are due and payable to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

Bernard S. Carrey, Esq.	-	Public Arbitrator, Presiding Chair
Barry Feiden	-	Public Arbitrator
Abe I. Borenstein	-	Industry Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

  
\_\_\_\_\_  
Bernard S. Carrey, Esq.  
Public Arbitrator, Presiding Chair

April 12, 2002  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Barry Feiden  
Public Arbitrator

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

\_\_\_\_\_  
Abe I. Borenstein  
Industry Arbitrator

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

April 22, 2002  
\_\_\_\_\_  
Date of Service (For NASD office use only)

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Signature Date

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Industry Arbitrator

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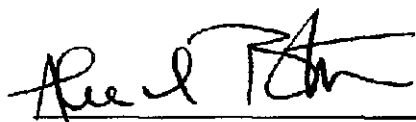
Signature Date

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Barry Feiden  
Public Arbitrator

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Signature Date



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Abe I. Borenstein  
Industry Arbitrator

4/11/02

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Signature Date

April 22, 2002  
Date of Service (For NASD office use only)