

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

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In the Matter of the Arbitration Between:

Stephen G. Loy III (Claimant) v. Dean Witter Reynolds, Inc. a/k/a Morgan Stanley Dean Witter, Inc. (Respondent)

Case Number: 01-01007

Hearing Site: Houston, Texas

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**REPRESENTATION OF PARTIES**

Claimant Stephen G. Loy III, hereinafter referred to as "Claimant," was represented by Mark C. Walter, Esq. of Ross, Banks, Cron & Cavin, P.C. Houston, Texas.

Respondent Dean Witter Reynolds, Inc. a/k/a Morgan Stanley Dean Witter, Inc., hereinafter referred to as "Respondent" was represented by Allison Barry Doneghey, Esq., of Morgan Stanley Dean Witter, Sarasota, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: March 3, 2001.

Claimant signed the Uniform Submission Agreement on February 2, 2001.

Respondent filed a Statement of Answer on or about May 4, 2001.

Respondent did not file a Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: Claimant lost substantial sums of money in connection with the mishandling of his securities account by Respondent; Respondents violated the Texas Deceptive Trade Practices act, the Texas Fraud Statute and the Texas Securities Act (Blue Sky Law); Respondent breached their fiduciary duty to Claimant; and, Respondents engaged in common law negligence, fraud and misrepresentation.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Claimant's claims are barred as a result of his failure to mitigate his damages;

2. Respondent acted in good faith and exercised reasonable diligence;
3. Claimant's losses were proximately caused by his own conduct;
4. Claimant is barred from recovery by the doctrine of *in pari delict*;
5. All common law tort claims are barred by the Economic Loss Doctrine;
6. Extraordinary market conditions may have existed to cause certain losses; and,
7. The claims set forth by Claimant are in whole or in part barred by the applicable statute of limitations.

### **RELIEF REQUESTED**

Claimant requested:

Compensatory Damages	\$ 227,481.52
Punitive damages	\$ 682,444.56
Interest	\$ Unspecified
Attorneys' Fees	\$ Unspecified
Other Costs	\$ Unspecified

Respondent Dean Witter Reynolds, Inc. a/k/a Morgan Stanley Dean Witter, Inc. requested that the Statement of Claim be dismissed in its entirety.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondent did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

### **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 Dean Witter Reynolds, Inc. a/k/a Morgan Stanley Dean Witter, Inc. is liable for and shall pay to Claimant Steven G. Loy III, compensatory damages in the sum of \$35,000.00 plus 6% compound interest. The interest will begin to accrue the first day of December, 1998 and continue to accrue until the compensatory damages are paid in full;
2. Respondent Dean Witter Reynolds, Inc. a/k/a Morgan Stanley Dean Witter, Inc. is liable for and shall pay to Claimant Steven G. Loy III attorneys' fees in the sum of \$ 45,000.00. Based on the pleading and evidence presented at the hearing the panel finds that it has the authority to grant attorneys' fees;
3. Except as otherwise specified herein, each party shall bear its own costs and attorney's fees; and,

4. Any and all relief not specifically addressed herein is 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	= \$ 1,000.00
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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(s) that employed the associated person at the time of the event(s) giving rise to the dispute. In this matter, the member firm is Respondent Dean Witter Reynolds, Inc. a/k/a Morgan Stanley Dean Witter, Inc.

Member surcharge	= \$ 2,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 3,500.00

#### 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 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 with the Panel x 1,200.00	= \$ 1,200.00
Pre-hearing conference: August 29, 2001 1 session	
One (1) Pre-hearing session with a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: November 19, 2001 1 session	
Seven (7) Hearing sessions x \$1,200.00	= \$ 8,400.00
Hearing Dates: February 26, 2002 3 sessions	
February 27, 2002 2 sessions	
February 28, 2002 2 sessions	

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Total Forum Fees	=\$10,050.00
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The panel has assessed \$5025.00 forum fees against Claimant Stephen G Loy, Inc. and assessed the remaining \$5025.00 forum fees against Respondent Dean Witter Reynolds, Inc. a/k/a Morgan Stanley Dean Witter, Inc.

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**FEE SUMMARY**

Claimant Stephen G. Loy III is solely liable for:

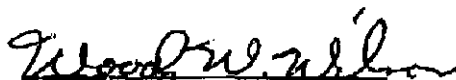
Filing Fee	= \$ 375.00
Forum Fees	= \$ 5,025.00
Total Fees	= \$ 5,400.00
Less payments	= \$ 1,575.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 3,825.00

Respondent Dean Witter Reynolds, Inc. a/k/a Morgan Stanley Dean Witter, Inc. is solely liable for:

Member Fees	= \$ 6,100.00
Forum Fees	= \$ 5,025.00
Total Fees	= \$ 11,125.00
Less payments	= \$ 6,700.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 4,425.00

**ARBITRATION PANEL**

Woody M. Wilson-Public Arbitrator, Presiding Chair  
Antoinette M. Romano- Public Arbitrator  
James M. Alexander-Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Woody M. Wilson,  
Non-Public Arbitrator  
Presiding Chair

3/20/2002  
Signature Date

Antoinette M. Romano  
Public Arbitrator

Signature Date

James M. Alexander  
Non-Public Arbitrator

Signature Date

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

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3/21/02  
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Woody M. Wilson,  
Non-Public Arbitrator  
Presiding Chair


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Signature Date

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Antoinette M. Romano  
Public Arbitrator

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Signature Date  
James M. Alexander  
Non-Public Arbitrator

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3-20-02  
Signature Date

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