

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Peter C. Frank, Claimant v. Morgan Stanley Dean Witter, Inc., Respondent

Case Number: 01-01523

Hearing Site: Los Angeles, California

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**REPRESENTATION OF PARTIES**

For Claimant Peter C. Frank:

Robert A. Uhl, Esq.  
Ryan K. Bakhtiari, Esq.  
Aidikoff & Uhl  
Beverly Hills, California

For Respondent Morgan Stanley Dean Witter, Inc.:

Patricia A. Gomez, Esq.  
Morgan Stanley Dean Witter, Inc.  
Santa Ana, California

**CASE INFORMATION**

Statement of Claim filed: March 26, 2001

First Amended Statement of Claim filed: July 12, 2001

Claimant's Uniform Submission Agreement signed: March 22, 2001

Statement of Answer filed by Respondent: July 3, 2001

Respondent's Uniform Submission Agreement signed: July 5, 2001

**CASE SUMMARY**

Claimant alleged breach of fiduciary duty, breach of contract, negligence, and failure to supervise involving the cash-less exercise of stock options in Acacia Research Corp.

Respondent denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

### **RELIEF REQUESTED**

Claimant requested compensatory damages of \$79,492.00, interest at the legal rate, and costs, including attorney's fees.

Respondent requested dismissal of the Claimant's Statement of Claim in its entirety.

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

On July 12, 2001, Claimant filed an Amended Statement of Claim pursuant to the NASD Code of Arbitration Procedure Rule 10328(a). The Amended Statement of Claim supplemented footnote 1 but was otherwise identical to the original Statement of Claim.

On September 25, 2002, Respondent moved the Panel to disqualify Claimant's expert witness. After due deliberation in an executive session, the Panel denied the motion.

On September 25, 2002, Respondent moved the Panel for summary judgment. After due deliberation in an executive session, the Panel denied the motion.

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 Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimant's claims are denied in their entirety.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) All other relief requested and not expressly granted is denied.

### FEES

Pursuant to the Code, the following fees are assessed:

#### Filing Fees

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

Initial claim filing fee	= \$ 225.00
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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. Accordingly, the member firm Morgan Stanley Dean Witter, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,000.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	<u>= \$ 1,500.00</u>
<b>Total Member Fees</b>	<b>= \$ 3,100.00</b>

#### 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 or the parties and the Panel. The following fees are assessed:

One (1) Pre-hearing conference session with a single arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conference: March 20, 2002 1 session	

One (1) Pre-hearing conference session with the Panel @ \$750.00/session	= \$ 750.00
Pre-hearing conference: February 22, 2002 1 session	

Five (5) Hearing sessions @ \$750.00/session	= \$ 3,750.00
Hearings: September 24, 2002 2 sessions	
September 25, 2002 2 sessions	
September 26, 2002 1 session	

<b>Total Forum Fees</b>	<b>= \$ 4,950.00</b>
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1. The Panel assessed \$1,650.00 of the forum fees to Claimant Peter C. Frank.
2. The Panel assessed \$3,300.00 of the forum fees to Respondent Morgan Stanley Dean Witter, Inc.

**Fee Summary**

1. Claimant Peter C. Frank is charged with the following fees and costs:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$ 1,650.00
Total Fees	= \$ 1,875.00
Less payments	= \$ (975.00)
Balance Due NASD Dispute Resolution	= \$ 900.00

2. Respondent Morgan Stanley Dean Witter, Inc. is charged with the following fees and costs:

Member Fees	= \$ 3,100.00
Forum Fees	= \$ 3,300.00
Total Fees	= \$ 6,400.00
Less payments	= \$(6,100.00)
Balance Due NASD Dispute Resolution	= \$ 300.00


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

ARBITRATION PANEL

Annette Gres Shepherd  
Lynne Susan Bassis, Esq.  
Robert D. Sussin, Esq.

Public Arbitrator, Presiding Chair  
Public Arbitrator  
Non-Public Arbitrator

Concurring Arbitrators' Signatures

  
Annette Gres Shepherd  
Chair, Public Arbitrator

9/30/02  
Signature Date

\_\_\_\_\_  
Lynne Susan Bassis, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Robert D. Sussin, Esq.  
Non-Public Arbitrator

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

9-30-02  
Date of Service

ARBITRATION PANEL

Annette Gres Shepherd  
Lynne Susan Bassis, Esq.  
Robert D. Sussin, Esq.

- Public Arbitrator, Presiding Chair  
- Public Arbitrator  
- Non-Public Arbitrator


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Chair, Public Arbitrator

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Public Arbitrator

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Signature Date

  
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Non-Public Arbitrator

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