

**Award  
NASD**

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In the Matter of the Arbitration Between:

OP Monies, LTD. Partnership, through its General Partners, James Pagano and Bruce Pagano,  
Claimant v. Morgan Stanley Dean Witter Inc. and Lisa Byron, Respondents

Case Number: 01-01531

Hearing Site: Boca Raton, Florida

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**REPRESENTATION OF PARTIES**

For OP Monies, LTD. Partnership, through its General Partners, James Pagano and Bruce Pagano, hereinafter referred to as "Claimant": Nanci S. Landy, Esq., Landy & Associates, North Miami Beach, FL.

For Morgan Stanley Dean Witter Inc. ("MSDW") and Lisa Byron ("Byron"), hereinafter referred to as "Respondents": Peter J. Aldrich, Esq., Peter J. Aldrich, P.A., Palm Beach Gardens, FL.

**CASE INFORMATION**

Statement of Claim filed on or about: March 21, 2001.

Claimant's Uniform Submission Agreement signed: March 14, 2001.

Respondents' Answer filed on or about: May 30, 2001.

Respondent MSDW's Uniform Submission Agreement signed: June 28, 2001.

Respondent Byron's Uniform Submission Agreement signed: July 8, 2001.

**CASE SUMMARY**

Claimant alleged the following causes of action: 1) unauthorized trading; 2) unauthorized use of margin; 3) churning; 4) violation of Section 517.301, Florida Statutes; 5) fraud; 6) negligence and gross negligence; 7) breach of fiduciary duty; and 8) negligent supervision. The causes of action relate to Respondents' trading on margin without prior authorization from Claimant.

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

**RELIEF REQUESTED**

Claimant requested in its Statement of Claim: 1) compensatory damages in excess of \$100,000.00; 2) an unspecified amount of punitive damages; 3) pre-judgment interest; 4) costs; and 5) that the issue of attorneys' fee be referred to a court of law in the State of Florida.

Respondents requested that the panel dismiss Claimant's Statement of Claim in its entirety.

**OTHER ISSUES CONSIDERED AND DECIDED**

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

- 1) The Panel finds Respondents liable to Claimant for churning, negligent supervision, unauthorized trading, and unauthorized use of margin.
- 2) The Panel does not find liability under Section 517, Florida Statutes.
- 3) Respondents are jointly and severally liable and shall pay to Claimant compensatory damages in the amount of \$85,000.00, plus interest at the Florida statutory rate from March 21, 2001 until date of payment of the Award.
- 4) Respondents are jointly and severally liable to Claimant for \$225.00, which represents reimbursement of the initial claim filing fee previously paid by Claimant to NASD.
- 5) The Panel made no determination with respect to Claimant's request that the issue of attorneys' fees be referred to a court of law in the State of Florida.
- 6) Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages, are denied.

**FEES**

Pursuant to the NASD Code of Arbitration (the "Code"), the following fees are assessed:

**Filing Fees**

NASD 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. Respondent MSDW is a party to this dispute and was an NASD member at the time the following fees were assessed:

Member Surcharge	= \$ 1,000.00
Pre-Hearing Process Fee	= \$ 600.00
Hearing Process Fee	= \$ 1,500.00

Total Member Fees = \$ 3,100.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

June 18, 2002, adjournment requested by Respondents = \$ 750.00

The Panel assessed the adjournment fees of \$750.00 to Respondents, jointly and severally.

**Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the arbitrator.

Injunctive relief fees were not assessed in this matter.

**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:

Three (3) Pre-hearing conferences with the Panel @ \$750.00 = \$ 2,250.00

Pre-hearing conferences:      January 29, 2002      1 session  
   February 7, 2002      1 session  
   May 3, 2002      1 session

Three (3) Hearing sessions with the Panel @ \$750.00 = \$ 2,250.00

Hearings:      March 3, 2003      2 sessions  
                                 March 4, 2003      1 session

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**Total Forum Fees** = \$ 4,500.00

The Panel assessed the forum fees of \$2,250.00 to Claimant.

The Panel assessed the forum fees of \$2,250.00 to Respondents, jointly and severally.

**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 solely liable for the following fees and costs:

Forum Fees	= \$ 2,250.00
<u>Initial Filing Fee</u>	= \$ 225.00
Total Fees	= \$ 2,475.00
<u>Less payments</u>	= \$ 975.00
Balance Due NASD	= \$ 1,500.00

Respondent MSDW is solely liable for the following fees and costs:

<u>Member Fees</u>	= \$ 3,100.00
Total Fees	= \$ 3,100.00
<u>Less payments</u>	= \$ 3,100.00
Balance Due NASD	= \$ 0.00

Respondents are liable for the following fees and costs, jointly and severally:

Forum Fees	= \$ 2,250.00
<u>Adjournment Fees</u>	= \$ 750.00
Total Fees	= \$ 3,000.00
<u>Less payments</u>	= \$ 600.00
Balance Due NASD	= \$ 2,400.00

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

**ARBITRATION PANEL**

Syma S. Kasdin	-	Public Arbitrator, Presiding Chair
Leslie L. Cooney, Esq.	-	Public Arbitrator
Beverly B. Kennedy	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
Syma S. Kasdin  
Chair, Public Arbitrator

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

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/s/  
Leslie L. Cooney, Esq.  
Public Arbitrator

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

/s/  
Beverly B. Kennedy  
Non-Public Arbitrator

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

March 10, 2003  
Date of Service (For NASD office use only)

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There were no administrative costs incurred during these proceedings.

Fee Summary

Claimant is solely liable for the following fees and costs:

Forum Fees	= \$ 2,250.00
Initial Filing Fee	= \$ 225.00
Total Fees	= \$ 2,475.00
Less payments	= \$ 975.00
Balance Due NASD	= \$ 1,500.00

Respondent MSDW is solely liable for the following fees and costs:

Member Fees	= \$ 3,100.00
Total Fees	= \$ 3,100.00
Less payments	= \$ 3,100.00
Balance Due NASD	= \$ 0.00

Respondents are liable for the following fees and costs, jointly and severally:


Forum Fees	= \$ 2,250.00
Adjournment Fees	= \$ 750.00
Total Fees	= \$ 3,000.00
Less payments	= \$ 600.00
Balance Due NASD	= \$ 2,400.00

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

ARBITRATION PANEL

Syma S. Kasdin	Public Arbitrator, Presiding Chair
Leslie L. Cooney, Esq.	Public Arbitrator
Beverly B. Kennedy	Non-Public Arbitrator

Concurring Arbitrators' Signatures

  
Syma S. Kasdin  
Chair, Public Arbitrator

3/9/03  
Signature Date

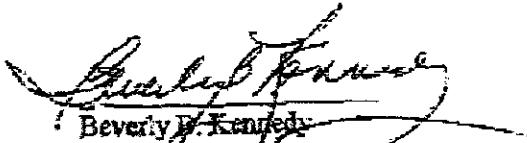
NASD

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Leslie L. Cooney, Esq.  
Public Arbitrator

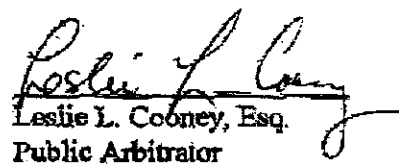
Signature Date

  
Beverly H. Kennedy  
Non-Public Arbitrator

March 8, 2003.  
Signature Date

Date of Service (For NASD office use only)

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Leslie L. Cooney, Esq.  
Public Arbitrator

Nov 10, 2003  
Signature Date

Beverly B. Kennedy  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)