

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Herbert E. Gleicke Trust v. Morgan Stanley Dean Witter and John M. Grazioli

Case Number: 01-01621

Hearing Site: Los Angeles, California

REPRESENTATION OF PARTIES

For Claimant:

Herbert E. Gleicke Trust

Morse Taylor, Esq.
Taylor & Miller
Santa Monica, California

For Respondents:

Morgan Stanley Dean Witter Inc.

Kevin Fitzgerald, Esq.
Jones, Bell, Fitzgerald &
Abott
Los Angeles, California

John M. Grazioli

Kevin Fitzgerald, Esq.
Jones, Bell, Fitzgerald &
Abott
Los Angeles, California

CASE INFORMATION

Statement of Claim filed: March 27, 2001.

Amended Statement of Claim filed: April 3, 2002.

Claimant's Uniform Submission Agreement signed: March 5, 2001.

Statement of Answer filed by Respondents: June 18, 2001.

Amended Statement of Answer filed by Respondents: April 18, 2002.

Respondents' Uniform Submission Agreement signed: June 14, 2001.

CASE SUMMARY

Claimant alleged unauthorized trading, breach of fiduciary duty, breach of contract, failure to supervise, negligence, misrepresentation, churning, omission of facts, and failure to follow instructions relating to margin trades, hedge fund purchases, transactions in various blue chip stocks, option trades in Cisco System securities and the purchase of Safeguard securities.

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

RELIEF REQUESTED

Claimant requested \$277,000.00 in compensatory damages, \$100,000.00 in punitive damages, and costs, including attorney's fees. Claimant's Amended Statement of Claim requested \$236,000.00 in compensatory damages, an unspecified amount of punitive damages and costs, including attorney's fees.

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

OTHER ISSUES CONSIDERED AND DECIDED

On April 3, 2002, Claimant filed a Motion to Amend Statement of Claim pursuant to the NASD Code of Arbitration Procedure ("Code") Rule 10328(b). The Panel granted the motion.

During the evidentiary hearing, Respondent moved the Panel to allow a witness to testify telephonically. The Panel granted the Motion.

On December 23, 2002, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On January 9, 2003, Respondents Morgan Stanley Dean Witter and John M. Grazioli's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

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) Respondents shall reimburse the Initial Claim Filing Fee to Claimant in the amount of \$300.00.
- 3) The parties shall bear their respective costs, including attorney's fees.
- 4) 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	= \$ 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. Accordingly, the member firm Morgan Stanley Dean Witter is a party and the following fees are assessed:

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

Adjournment Fees

The following adjournment fees are assessed:

June 25, 2002 hearing session adjournment requested by Respondents.	= \$1,125.00
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July 16, 2002 hearing session adjournment requested by Claimant.	= \$1,125.00
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The Panel assessed **\$2,250.00** of the adjournment fees jointly and severally to Respondents.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the Panel or Chairperson, including a pre-hearing conference, that lasts four (4) hours or less. The following fees are assessed:

(1) Pre-hearing conference sessions with the Panel @ \$1,125.00/session	= \$1,125.00
Pre-hearing conference: March 21, 2002 1 session	

(6) Hearing sessions @ \$1,125.00/session	= \$ 6,750.00
Hearings: January 9, 2003 2 sessions	
January 10, 2003 2 sessions	
January 30, 2003 2 sessions	

Total Forum Fees	= \$ 7,875.00
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The Panel assessed **\$7,875.00** of the forum fees jointly and severally to Respondents.

Fee Summary

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

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

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

Member Fees	= \$ 4,600.00
<u>Less payments</u>	<u>= \$(4,600.00)</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Morgan Stanley Dean Witter and John M. Grazioli are charged jointly and severally with the following fees and costs:

Adjournment Fee	= \$ 2,250.00
Forum Fees	= \$ 7,875.00
Total Fees	= \$10,125.00
Less Morgan Stanley Dean Witter's Mediation Deposit	= \$ 1,400.00
Less payments	= \$ (0.00)
Balance Due NASD Dispute Resolution	= \$ 8,725.00

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


Louis R. Eglash, Esq.
Howard A. Emrichanian
Leo B. Rotter

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Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

Louis R. Eglash, Esq.
Chair, Public Arbitrator



Signature Date 2-4-03

Howard A. Emrichanian
Public Arbitrator

Signature Date

Leo B. Rotter
Non-Public Arbitrator

Signature Date

2-6-03

Date of Service
(NASD USE ONLY)


ARBITRATION PANEL

Louis R. Eglash, Esq.	-	Public Arbitrator, Presiding Chair
Howard A. Emirhanian	-	Public Arbitrator
Leo B. Rotter	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Louis R. Eglash, Esq.
Chair, Public Arbitrator

Signature Date



Howard A. Emirhanian
Public Arbitrator

2/4/03

Signature Date

Leo B. Rotter
Non-Public Arbitrator

Signature Date

2-6-03

Date of Service
(NASD USE ONLY)

ARBITRATION PANEL

Louis R. Eglash, Esq.

Howard A. Emirhanian

Leo B. Rotter

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Public Arbitrator, Presiding Chair

Public Arbitrator

Non-Public Arbitrator

Concurring Arbitrators' Signatures

Louis R. Eglash, Esq.


Chair, Public Arbitrator

Signature Date

Howard A. Emirhanian

Public Arbitrator

Signature Date



Leo B. Rotter

Non-Public Arbitrator

Signature Date

2-6-03
Date of Service
(NASD USE ONLY)



Proof of Service

State of California, County of Los Angeles

I am employed in the county of Los Angeles. I declare that I am over the age of eighteen (18) and not a party to this action. My business address is:

**NASD Dispute Resolution
300 South Grand Avenue, Suite 900
Los Angeles, California 90071.**

On February 6, 2003, I served the following documents described as:

Award, Cover Letters, and Invoice Statement for Arbitration Case No. 01-01621 on the interested parties in this action by placing the true copies thereof enclosed in the sealed envelopes as follows:

Mr. Kevin Fitzgerald, Jones, Bell, Fitzgerald & Abott, 601 South Figueroa, Suite 27, Los Angeles, CA, 90071, and Facsimile 213-689-1004

Mr. Morse Taylor, Taylor & Miller, Parkhurst Building, 185 Pier Avenue, Santa Monica, CA, 90405, and Facsimile 310-396-2139

- ☒ I deposited such envelop in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.
- ☐ By Personal Service, I caused such envelope to be delivered by hand to the individuals at the addressee(s) listed.
- ☐ By overnight courier, I caused the above-referenced documents to be delivered to an overnight courier service (Federal Express), for delivery to the above addressees.
- ☒ By facsimile machine, I caused the above-referenced documents to be transmitted to the above-named persons at the numbers above.
- ☒ (STATE) I declare under penalty of perjure under the laws of the State of California that the above is true and correct.
- ☐ (FEDERAL) I declare that I am employed in the office of a member of the bar on this court at whose direction the service was made.

Executed this February 6, 2003, at Los Angeles, California.



Jennifer J. Miles