

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

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In the Matter of the Arbitration Between:

William Hamilton Hall and Mickle Syme Hall, Claimants v. Morgan Stanley Dean Witter and Joseph Paul Schlater, Respondents

Case Number: 01-01862

Hearing Site: San Francisco, California

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**REPRESENTATION OF PARTIES**

For Claimants:

Cary S. Lapidus, Esq.  
Law Offices of Cary S. Lapidus  
San Francisco, California

For Respondents:

Gilbert R. Serota, Esq.  
Howard Rice Nemerovski Canady Falk & Rabkin  
San Francisco, California

**CASE INFORMATION**

Statement of Claim filed: April 9, 2001

Claimants' Uniform Submission Agreement signed: April 4, 2001

Statement of Answer filed by Respondents: June 12, 2001

Respondents' Uniform Submission Agreements: None filed

**CASE SUMMARY**

Claimants alleged suitability, fraud, deceit and omission of material fact, negligent misrepresentation, breach of fiduciary duty, breach of implied covenant of good faith and fair dealing, violations of the anti-fraud provisions of the Securities Exchange Act of 1934, and failure to supervise involving various securities investments.

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

### **RELIEF REQUESTED**

Claimants requested compensatory damages of \$5,699,817.00, disgorgement, unspecified punitive damages, interest, and costs, including attorney's fees.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety, and costs.

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

Respondents Morgan Stanley Dean Witter and Joseph Paul Schlater did not file with the NASD Dispute Resolution, properly executed submission agreements; however, all said Respondents are required to submit to arbitration and, having answered the claim and having appeared and testified at the hearing, all said Respondents are bound by the determination of the Panel on all issues submitted.

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) Respondents are jointly and severally liable to and shall pay Claimants the sum of \$1,766,000.00 in compensatory damages.
- 2) Claimants request for punitive damages is denied.
- 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	= \$ 600.00
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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	= \$ 3,000.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	<u>= \$ 5,000.00</u>
<b>Total Member Fees</b>	<b>= \$ 8,600.00</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:

Two (2) Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$ 2,400.00
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Pre-hearing conferences:	February 22, 2002	1 session
	December 5, 2002	1 session

Twenty-four (24) Hearing sessions @ \$1,200.00/session	= \$28,800.00
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Hearings:	September 30, 2002	2 sessions
	October 1, 2002	2 sessions
	October 2, 2002	2 sessions
	October 3, 2002	2 sessions
	October 4, 2002	2 sessions
	October 22, 2002	2 sessions
	October 23, 2002	2 sessions
	October 24, 2002	2 sessions
	November 25, 2002	2 sessions
	November 26, 2002	2 sessions
	December 12, 2002	2 sessions
	December 13, 2002	1 session
	December 27, 2002	1 session

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**Total Forum Fees** = \$31,200.00

1. The Panel assessed \$15,600.00 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$15,600.00 of the forum fees jointly and severally to Respondents.

**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 sundry other requests.

Claimants requested copies of hearing tapes: = \$ 60.00

**Fee Summary**

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$15,600.00
<u>Administrative Costs</u>	= \$ 60.00
Total Fees	= \$16,260.00
<u>Less payments</u>	= \$( 1,860.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$14,400.00</b>

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

Member Fees	= \$ 8,600.00
<u>Less payments</u>	= \$(8,600.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

3. Respondents Morgan Stanley Dean Witter and Joseph Paul Schlater are charged jointly and severally with the following fees and costs:

Forum Fees	= \$15,600.00
<u>Less payments</u>	= \$( 0.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$15,600.00</b>

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.

NASD Dispute Resolution  
Arbitration No. 01-01-00000  
Award Page 5 of 5

**ARBITRATION PANEL**

James H. Smith

Walter J. Huntley, III


Neil G. Chen

Public Arbitrator, Presiding Chair

Public Arbitrator

Non-Public Arbitrator

**Consenting Arbitrators' Signatures**

  
James H. Smith  
Chair, Public Arbitrator

Jan 21, 2003  
Signature Date

Walter J. Huntley, III  
Public Arbitrator

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

Neil G. Chen  
Non-Public Arbitrator

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

1/22/03  
Date of Service

NASD Dispute Resolution  
Arbitration No. 01-01862  
Award Page 5 of 5

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**ARBITRATION PANEL**

James H. Schilt	-	Public Arbitrator, Presiding Chair
Walter J. Huntley, III	-	Public Arbitrator
Neil G. Clem	-	Non-Public Arbitrator

**Concerning Arbitrators' Signatures**

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James H. Schilt  
Chair, Public Arbitrator

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Signature Date

*Walter J. Huntley III*  
Walter J. Huntley, III  
Public Arbitrator

*1-22-03*  
Signature Date

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Neil G. Clem  
Non-Public Arbitrator

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Signature Date

*1/22/03*  
Date of Service

ARBITRATION PANEL

James H. Schilt	-	Public Arbitrator, Presiding Chair
Walter J. Huntley, III	-	Public Arbitrator
Neil G. Clew	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

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James H. Schilt  
Chair, Public Arbitrator

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

\_\_\_\_\_  
Walter J. Huntley, III  
Public Arbitrator

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

  
\_\_\_\_\_  
Neil G. Clew  
Non-Public Arbitrator

1/22/05  
\_\_\_\_\_  
Signature Date

1/22/03  
\_\_\_\_\_  
Date of Service



### 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 , Western Regional Office.  
300 South Grand Avenue, Suite 900  
Los Angeles, California 90071-3135.**

On January 22, 2003, I served the following documents described as:

**Award, Cover Letters, and Invoice Statement for Arbitration Case No. 01-01862** on the interested parties in this action by placing the true copies thereof enclosed in the sealed envelopes as follows:

**Cary S. Lapidus, Esq., Law Offices of Cary S. Lapidus , 425 California Street, San Francisco, CA. 94104, Fax: 415-296-7821.**

**Gilbert R. Serota, Esq., Howard Rice Nemerovski Canady Falk & Rabkin, Three Embarcadero Center Seventh Floor, San Francisco, CA. 94111, Fax: 415-217-5910**

- ☒ X 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.
- ☒ X By facsimile machine, I caused the above-referenced documents to be transmitted to the above-named persons at the numbers above.
- ☒ X (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 January 22, 2003, at Los Angeles, California.

*Ma. Paz S. Medina*  
Maria P. Medina