

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Alston Roberts and Niroopa Roberts, (Claimants) vs. Morgan Stanley Dean Witter and Michael DeRosa, (Respondents)

Case Number: 01-01882

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimants, Alston Roberts ("A. Roberts") and Niroopa Roberts ("N. Roberts"), hereinafter collectively referred to as "Claimants": Adolph D. Seltzer, Esq., a sole practitioner, New York, NY.

Respondents, Morgan Stanley Dean Witter ("MSDW") and Michael DeRosa ("DeRosa"), hereinafter collectively referred to as "Respondents": James D. Yellen, Esq., First Vice President and Senior Attorney, Morgan Stanley Dean Witter, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: April 10, 2001.

A. Roberts signed the Uniform Submission Agreement: April 10, 2001.

N. Roberts signed the Uniform Submission Agreement: April 10, 2001.

Joint Statement of Answer filed by Respondents on or about: June 25, 2001.

MSDW signed the Uniform Submission Agreement: June 25, 2001.

DeRosa signed the Uniform Submission Agreement: June 25, 2001.

CASE SUMMARY

Claimants asserted the following causes of action: churning; breach of fiduciary duty; violation of NASD and NYSE rules; failure to properly supervise; negligent mismanagement of account; violation of the Securities Exchange Act of 1934; fraud; and negligence. Claimant's claim involved unspecified financial products.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: all of the transactions effected in Claimants' account were suitable for the account's investment objectives and Claimant's financial status, and were entirely consistent with Claimant's expressed financial goals; Claimants were fully advised of the relative risks inherent in the investments and knowingly chose to assume those risks; Claimants waived any objections they may have had to the transactions, their suitability or authorization, or any alleged losses therefrom, and are estopped from asserting any claims regarding them at this time; Claimants ratified and approved the subject transactions; no misrepresentations or omissions of a material fact have ever been made by MSDW or any of its agents concerning the investment transactions at

issue in this proceeding; Claimants' claims are barred by the contractual provisions contained in the executed margin agreement; any claims made for alleged violations of the rules of the NYSE or NASD must be dismissed since no private right of action exists at law for violations of these rules; there was no intent by MSDW or its agents to defraud Claimants nor any reckless disregard of the financial consequences to Claimants in connection with any of the transactions at issue; market conditions and events not caused by or in the control of MSDW or its agents and employees may have existed to cause certain losses which have been alleged by Claimants; Claimants failed to mitigate their alleged damages; at all relevant times, MSDW had reasonable and adequate supervisory procedures of its financial advisor which it reasonably and diligently implemented and followed; and Claimants are not entitled to attorneys' fees or punitive damages as a matter of law.

RELIEF REQUESTED

Claimants requested:

- a. Compensatory damages in the approximate amount of \$597,479.49, together with interest from January 1, 2000;
- b. Punitive damages in an amount to be determined by the Panel;
- c. The costs and disbursements of this arbitration proceeding, including reasonable attorneys' fees; and
- d. Such other and further relief as may be just and proper.

Respondents requested dismissal of this proceeding, plus an order of expungement of DeRosa's CRD records of this claim, and an award of attorneys' fees, costs, and disbursements of this proceeding.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have 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, 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. Claimants' claims are hereby denied in their entirety.
2. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent DeRosa's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent DeRosa must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

3. All other requests for relief are hereby denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee = \$ 375.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, Morgan Stanley Dean Witter is a party.

Member surcharge = \$2,000.00

Pre-hearing process fee = \$ 600.00

Hearing process fee = \$3,500.00

Adjournment Fees

Adjournments requested during these proceedings:

May 14, 15 & 16, 2002, adjournment by Claimant = **WAIVED.**

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel x \$1,200.00 = \$2,400.00

Pre-hearing conferences:	January 7, 2002	1 session
	May 13, 2002	1 session

Four (4) Hearing sessions x \$1,200.00 = \$4,800.00

Hearing Dates:	July 30, 2002	2 sessions
	July 31, 2002	2 sessions

Total Forum Fees = \$7,200.00

1. The Panel has assessed \$3,600.00 of the forum fees against Claimants.
2. The Panel has assessed \$3,600.00 of the forum fees jointly and severally against Respondents.

Fee Summary

1. Claimants be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$3,600.00
Total Fees	= \$3,975.00
Less payments	= \$1,575.00
Balance Due NASD Dispute Resolution	= \$2,400.00

2. MSDW be and hereby is solely liable for:

Member Fees	= \$6,100.00
Total Fees	= \$6,100.00
Less payments	= \$6,100.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents be and hereby are jointly and severally liable for:

Forum Fees	= \$3,600.00
Total Fees	= \$3,600.00
Less payments	= \$ 600.00
Balance Due NASD Dispute Resolution	= \$3,000.00

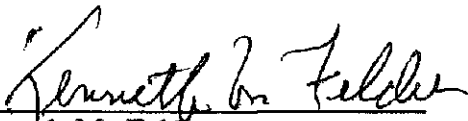
All balances are payable to NASD Dispute Resolution, and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Kenneth M. Felder	-	Public Arbitrator, Presiding Chair
Philip C. Loomis, CFA	-	Public Arbitrator
Anthony P. Reres	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Kenneth M. Felder
Public Arbitrator, Presiding Chair

8/17/02
Signature Date

Philip C. Loomis, CFA
Public Arbitrator

Signature Date

Anthony P. Reres
Non-Public Arbitrator

Signature Date

August 21, 2002
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

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Signature Date

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Public Arbitrator

8/14/02
Signature Date

Anthony P. Reres
Non-Public Arbitrator

Signature Date

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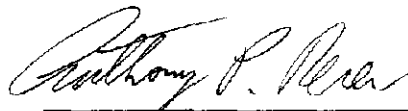
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Public Arbitrator, Presiding Chair

Signature Date

Philip C. Loomis, CFA
Public Arbitrator

Signature Date



Anthony P. Reres
Non-Public Arbitrator

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Signature Date

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