

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Roseann Martucci IRA, (Claimant) vs. Morgan Stanley Dean Witter and Dominick Giovannione,
(Respondents)

Case Number: 01-02062

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Roseann Martucci IRA, hereinafter referred to as "Claimant": Richard Birmingham, Esq., a sole practitioner, Staten Island, NY.

Respondents, Morgan Stanley Dean Witter ("MSDW") and Dominick Giovannione ("Giovannione"), hereinafter collectively referred to as "Respondents": Gary E. Jackson, Esq., Vice President and Senior Attorney, Morgan Stanley Dean Witter, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: April 19, 2001.

Claimant signed the Uniform Submission Agreement: April 19, 2001.

Joint Statement of Answer filed by Respondents on or about: July 20, 2001.

MSDW signed the Uniform Submission Agreement: July 19, 2001.

Giovannione signed the Uniform Submission Agreement: July 9, 2001.

CASE SUMMARY

Claimant asserted the following causes of action: unsuitability; failure to follow instructions; breach of contract; negligence; failure to supervise; and breach of fiduciary duty. Claimant's claim involved unspecified mutual funds.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state a claim upon which relief may be granted; any and all duties that Respondents owed to Claimant were fully and faithfully performed; all of the transactions that were affected for Claimant were suitable for her investment objectives and financial status, and were consistent with her expressed financial goals; all of the transactions in Claimant's account were thoroughly discussed with her, authorized by her, and effectuated with her full knowledge and consent; there was no negligence by Respondents in the handling of Claimant's account; the actions and omissions of Claimant, not Respondents, caused her alleged damages;

Claimant ratified all of the securities transactions at issue; Claimant's claims are barred by estoppel; Claimant did not suffer any actual damages; Claimant failed to mitigate her alleged damages; Claimant has waived any objection she may have had to the subject transactions, their suitability, or any alleged losses therefrom; Respondents did not act with intent to defraud Claimant or with reckless disregard for the financial consequences to her of any of the transactions at issue; Respondents did not make any misrepresentations of material fact, nor did they omit to state any material fact, concerning any of the transactions at issue; Claimant was thoroughly advised of all pertinent aspects of the investment transactions at issue; Respondents breached no contract with Claimant; and Respondents were not negligent in the handling of Claimant's account or any other matter relating to this case.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$75,000.00, plus costs, interest, and attorneys' fees.

Respondents requested that the Panel:

- a. Dismiss the Statement of Claim;
- b. Grant Respondents the costs and expenses of this arbitration; and
- c. Grant Respondents such other relief as is just and proper.

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. Claimant's claims are hereby dismissed in their entirety.

2. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent Giovannione'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 Giovannione 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, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 225.00
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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	= \$1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,500.00

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:

One (1) Pre-hearing session with Panel x \$750.00	= \$ 750.00
Pre-hearing conference: February 4, 2002	1 session
Two (2) Hearing sessions x \$750.00	= \$1,500.00
<u>Hearing Date:</u> April 10, 2002	<u>2 sessions</u>
Total Forum Fees	= \$2,250.00

The Panel has assessed all of the forum fees against Claimant.

Fee Summary

1. Claimant be and hereby is solely liable for:

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

2. MSDW be and hereby is solely liable for:

<u>Member Fees</u>	= <u>\$3,100.00</u>
Total Fees	= \$3,100.00
<u>Less payments</u>	= <u>\$3,700.00</u>
Refund Due MSDW	= \$ 600.00

All balances are due and payable to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Charles Kleinbaum, Esq.	-	Public Arbitrator, Presiding Chair
Donald J. Zoeller, Esq.	-	Public Arbitrator
Jeffrey Steinberg	-	Industry 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.



Charles Kleinbaum, Esq.
Public Arbitrator, Presiding Chair



Signature Date

Donald J. Zoeller, Esq.
Public Arbitrator

Signature Date

Jeffrey Steinberg
Industry Arbitrator

Signature Date

April 23, 2002

Date of Service (For NASD office use only)

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Industry Arbitrator

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Donald J. Zoeller, Esq.
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Industry Arbitrator

Signature Date

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