

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimant

Morgan Stanley Dean Witter, Inc.

V.

01-02210

Respondent

John T. Kitchar

Minneapolis, Minnesota

Counter Claimant

John T. Kitchar

V.

Counter Respondent

Morgan Stanley Dean Witter, Inc.

Third Party Claimant

John T. Kitchar

V.

Third Party Respondents

Michael E. Peterson

Brookstreet Securities Corporation

Round Hill Securities, Inc.

David Adix

Cross Claimant

Round Hill Securities, Inc.

V.

Cross Respondent

David Adix

REPRESENTATION OF PARTIES

Morgan Stanley Dean Witter, Inc. ("**MSDW**") and Michael E. Peterson ("**Peterson**") were represented by Daniel Oberdorfer, Esq., of Leonard, Street and Deinard, Minneapolis, Minnesota.

John T. Kitchar ("**Kitchar**") was represented by Michael M. Murphy, Esq., of the Murphy Law Offices, Saint Cloud, Minnesota.

David J. Adix ("**Adix**") was represented by Eric Caugh, Esq., of Zelle, Hoffman, Voelbel, Mason & Gette, Minneapolis, Minnesota.

Round Hill Securities, Inc. ("**Round Hill**") was represented by Thomas L. Kimer, Esq., of Faegre & Benson LLP, Minneapolis, Minnesota.

Brookstreet Securities Corporation ("**Brookstreet**") was represented by James K. Langdon, Esq., of Dorsey & Whitney LLP, Minneapolis, Minnesota.

CASE INFORMATION

The Statement of Claim was filed on or about April 25, 2001. Submission Agreement of Claimant Morgan Stanley Dean Witter, Inc. was signed on May 10, 2001 by Anne Cooney.

Statement of Answer Counter Claim and Third Party Claim was filed by Respondent John T. Kitchar on or about June 25, 2001. Submission Agreement of Respondent John T. Kitchar was signed on June 25, 2001.

Statement of Answer was filed by Respondent Michael E. Peterson on or about August 17, 2001. Submission Agreement of Respondent Michael E. Peterson was signed on August 17, 2001.

Statement of Answer was filed by Respondent David J. Adix on or about August 24, 2001. Submission Agreement of Respondent David J. Adix was signed on August 23, 2001.

Statement of Answer and Cross Claim was filed by Respondent Round Hill on or about August 17, 2001. Submission Agreement of Respondent Round Hill was signed on July 3, 2001.

Statement of Answer was filed by Respondent Brookstreet on or about August 31, 2001. Submission Agreement of Respondent Brookstreet was signed on August 9, 2001, 2001.

Claimant's Reply to Counterclaim was filed on or about July 6, 2001.

Statement of Answer to Cross Claim of Round Hill Securities was filed on or about April 5, 2002.

CASE SUMMARY

Claimant MSDW asserted the following causes of action: breach of contract. The causes of action relate to Kitchar's failure to repay a loss on his Active Asset Account.

Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: Kitchar disclaims margin account liability for trades done on the Morgan Stanley account which were unsolicited and made without his authorization; This account was churned for the purposes of generating commissions for the broker and broker-dealer resulting in financial damage to Kitchar; losses sustained were sustained by the broker and broker-dealer acting on their own behalf; and MSDW failed to properly supervise its broker, Michael Peterson, which resulted in the margin account losses complained of and was the direct and proximate cause of financial damage to Kitchar.

In his Third Party Claim against Round Hill and Brookstreet, Kitchar asserted the following causes of action: unauthorized trading, suitability, failure to supervise, and churning. The causes of action relate to the alleged unauthorized trading by Adix while he was employed under by Round Hill and Brookstreet. In his Third Party Claim against Adix and Peterson, Kitchar asserted the following causes of action: unauthorized trading, suitability, failure to supervise, breach of fiduciary duty and churning. The causes of action relate to the alleged unauthorized trading by broker David Adix and Michael Peterson while acting as broker dealers for Kitchar.

In his Counter Claim against MDSW, Kitchar asserted the following causes of action: unauthorized trading, suitability, failure to supervise, and churning. The causes of action relate to the alleged unauthorized trading by broker Michael Peterson while he was employed by MSDW.

Third Party Respondent Brookstreet Securities denied the allegations made in the Third Party Claim and asserted the following defenses: Kitchar authorized the transactions in his Brookstreet accounts and was fully aware of activity; Kitchar failed to take reasonable steps to mitigate his damages; and Brookstreet maintained an adequate and reasonable system of supervisory control of its registered representatives; and at all times Brookstreet acted in good faith and in compliance with all applicable securities laws and regulations

Third Party Respondent / Cross Claimant Round Hill Securities denied the allegations made in the Third Party Claim and asserted the following defenses: Kitchar fails to state a claim upon which relief may be granted; Kitchar ratified and affirmed all of the actions that occurred in his account; Kitchar's claims are barred by the doctrines of estoppel and waiver; Kitchar assumed the risks inherent in the investment strategy; Kitchar's claims against Round Hill are barred because he cannot establish that any damage or injury claimed by him was caused by Round Hill and not volatility in the stock market and Kitchar failed to provide any reasonable basis upon which relief may be granted. In its Cross Claim against David Adix, Round Hill asserted a claim for indemnification

Third Party Respondent / Cross Respondent David Adix denied the allegations made in the Third Party Claim and asserted the following defenses: Kitchar was at all times investing within his stated investment objectives, having full knowledge of risks; Kitchar had full knowledge and approved of every trade executed on his behalf; and that Kitchar had received receipt of all trade confirms, monthly reports and active account letters.

Third Party Respondent Michael Peterson denied the allegations made in the Statement of Claim and asserted the following defenses: Kitchar's claims are barred in whole or in part by the doctrines of laches, equitable estoppel, judicial estoppel, unclean hands waiver, and ratification.

RELIEF REQUESTED

MSDW requested an award against Kitchar in the amount of \$318,899.21 plus interest, costs, attorneys' fees, and any other fess the panel may deem appropriate.

In his counterclaim, Kitchar requested that the claims asserted against him be denied in their entirety and that he be awarded their costs, interest and attorneys' fees. In addition, Kitchar asserted in his Counter Claim and Third Party Claim damages in an amount that will exceed \$3,000,000 against MSDW and each of the Third Party Respondents, jointly and severally. Kitchar also asked for exemplary/punitive damages against MSDW and each of the Third Party Respondents in an amount to be determined at the hearing.

Peterson, Adix, Round Hill and Brookstreet requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

Round Hill Securities asserted in its' cross claim against David Adix that it be indemnified by Adix for any liability found by the Panel.

OTHER ISSUES CONSIDERED & DECIDED

On September 6, 2002 the Panel issued a ruling denying Respondent / Third Party Claimant / Counterclaimant John T. Kitchar's Motion to Continue the Hearing Dates. On the same date, a correspondence was filed by Kitchar's attorney stating that they would not appear at the hearing.

Pursuant to Parties' agreement the hearing was held telephonically on Tuesday, September 10, 2002. Kitchar's attorney appeared and stated that he would not participate in the hearing or prosecute any defenses or third party claims. The remaining parties agreed to proceed with the hearing telephonically.

During the September 10, 2002 telephonic hearing the following transpired:

1. MSDW verbally moved to dismiss Kitchar's Counter Claim and his Third Party Claim against Peterson.
2. Brookstreet, Adix, and Round Hill also verbally moved for a dismissal of Third Party Claims.
3. All Motions were unopposed and granted by the Panel. Each of the Third Party Claim, Counterclaim and Cross Claim were dismissed with prejudice.

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. In either case, the parties have agreed to receive conformed copies of the award while the originals remain on file with NASD Dispute Resolution ("NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. John T. Kitchar is liable for and shall pay to Morgan Stanley Dean Witter, the sum of Three Hundred and Forty Eight Thousand, Six Hundred and Sixty Seven Dollars and Thirty-Two Cents (\$348,667.32) as compensatory damages.
2. John T. Kitchar is liable for and shall pay to Morgan Stanley Dean Witter, interest on the above stated compensatory damages at the rate of 8% per annum from and including 9/10/2002 through and until the date this award is paid in full.
3. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief, including punitive damages by any party hereto are denied with prejudice.
4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

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 (MSDW)	= \$ 1,000
Third Party Claim filing fee (Kitchar)	= \$ 500
Cross Claim filing fee (Round Hill)	= \$ 500

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. In this matter, the member firms are Morgan Stanley Dean Witter, Round Hill Securities, Inc., and Brookstreet Securities Corporation.

Member surcharge (MSDW)	= \$ 1,500
Member surcharge (Round Hill & Brookstreet)	= \$ 2,500

Pre-hearing process fee	= \$ 600
Hearing process fee	= \$ 4,500

Forum Fees and Assessments

The Arbitration 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:

Three (3) Pre-hearing sessions with Panel x \$1,200	= \$ 3,600
<u>Pre-hearing conferences:</u>	
3/26/2002	1 session
8/23/2002	1 session
9/06/2002	1 session
One (1) Hearing sessions x \$1,200	= \$ 1,200
<u>Hearing Date:</u>	
9/10/2002	1 session
Total Forum Fees	= \$ 4,800

The Arbitration Panel has assessed \$4,800 of the forum fees to John T. Kitchar.

Fee Summary

Claimant/ Counter Claimant, Morgan Stanley Dean Witter, Inc., shall be and hereby is liable for:

Initial Filing Fee	= \$ 1,000
Member Fees	= \$ 6,600
Total Fees	= \$ 7,600
<u>Less payments</u>	= \$ 6,725
Balance Due NASD Dispute Resolution	= \$ 875

Respondent / Third Party Claimant, John T. Kitchar, shall be and hereby is liable for:

Third Party Claim Filing Fee	= \$ 500
Forum Fees	= \$ 4,800
Total Fees	= \$ 5,300
<u>Less payments</u>	= \$ 1,800
Balance Due NASD Dispute Resolution	= \$ 3,500

Third Party Respondent / Cross Claimant, Round Hill Securities, shall be and hereby is liable for:

Cross Claim Filing Fee	= \$ 500
Member Fees	= \$ 7,600
Total Fees	= \$ 8,100
<u>Less payments</u>	<u>= \$ 7,100</u>
Balance Due NASD Dispute Resolution	= \$ 1,000

Third Party Respondent / Cross Respondent, Brookstreet Securities Corporation, shall be and hereby is liable for:

Member Fees	= \$ 7,600
Total Fees	= \$ 7,600
<u>Less payments</u>	<u>= \$ 5,600</u>
Balance Due NASD Dispute Resolution	= \$ 2,000

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Matthew T. Boos - Public Arbitrator, Presiding Chair
Emily F. Seesel, Esq. - Public Arbitrator
Karen L. Sandefur, Esq. - Industry Arbitrator

Concurring Arbitrators:

Matthew T. Boos
Public Arbitrator, Presiding Chair

Signature Date

Emily F. Seesel, Esq.
Public Arbitrator

Signature Date

Karen L. Sandefur, Esq.
Industry Arbitrator

Signature Date

Cross Claim Filing Fee	= \$ 500
Member Fees	= \$ 7,600
Total Fees	= \$ 8,100
<u>Less payments</u>	<u>= \$ 7,100</u>
Balance Due NASD Dispute Resolution	= \$ 1,000

Third Party Respondent / Cross Respondent, Brookstreet Securities Corporation, shall be and hereby is liable for:

Member Fees	= \$ 7,600
Total Fees	= \$ 7,600
<u>Less payments</u>	<u>= \$ 5,600</u>
Balance Due NASD Dispute Resolution	= \$ 2,000

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Matthew T. Boos - Public Arbitrator, Presiding Chair
Emily F. Seesel, Esq. - Public Arbitrator
Karen L. Sandefur, Esq. - Industry Arbitrator

Concurring Arbitrators:



Matthew T. Boos
Public Arbitrator, Presiding Chair

10/17/02

Signature Date

Emily F. Seesel, Esq.
Public Arbitrator

Signature Date

Karen L. Sandefur, Esq.
Industry Arbitrator

Signature Date

Cross Claim Filing Fee	= \$ 500
Member Fees	= \$ 7,600
Total Fees	= \$ 8,100
<u>Less payments</u>	<u>= \$ 7,100</u>
Balance Due NASD Dispute Resolution	= \$ 1,000

Third Party Respondent / Cross Respondent, Brookstreet Securities Corporation, shall be and hereby is liable for:

Member Fees	= \$ 7,600
Total Fees	= \$ 7,600
<u>Less payments</u>	<u>= \$ 5,600</u>
Balance Due NASD Dispute Resolution	= \$ 2,000

All balances are due to NASD Dispute Resolution

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Emily F. Seesel, Esq. - Public Arbitrator
Karen L. Sandefur, Esq. - Industry Arbitrator

Concurring Arbitrators:

Matthew T. Boos
Public Arbitrator, Presiding Chair

Emily F. Seesel
Emily F. Seesel, Esq.
Public Arbitrator

Signature Date

October 17, 2002
Signature Date

Karen L. Sandefur, Esq.
Industry Arbitrator

Signature Date

Cross Claim Filing Fee	= \$ 500
Member Fees	= \$ 7,600
Total Fees	= \$ 8,100
<u>Less payments</u>	<u>= \$ 7,100</u>
Balance Due NASD Dispute Resolution	= \$ 1,000

Third Party Respondent / Cross Respondent, Brookstreet Securities Corporation, shall be and hereby is liable for:

Member Fees	= \$ 7,600
Total Fees	= \$ 7,600
<u>Less payments</u>	<u>= \$ 5,600</u>
Balance Due NASD Dispute Resolution	= \$ 2,000

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Matthew T. Boos - Public Arbitrator, Presiding Chair
Emily F. Seesel, Esq. - Public Arbitrator
Karen L. Sandefur, Esq. - Industry Arbitrator

Concurring Arbitrators:

Matthew T. Boos
Public Arbitrator, Presiding Chair

Signature Date

Emily F. Seesel, Esq.
Public Arbitrator

Signature Date



Karen L. Sandefur, Esq.
Industry Arbitrator

10/17/02

Signature Date