

NASD DISPUTE RESOLUTION AWARD
NASD DISPUTE RESOLUTION, INC.

CASE:01-02355

Robert M. Ashen, claimant vs. Morgan Stanley Dean Witter and Jac B. Stulberg, respondents.

ATTORNEYS:

Claimant appeared Pro Se, Beverly Hills, CA.

For Respondents appeared Wendy R. Robinson, Esq., in-house counsel, San Francisco, CA.

DATE FILED: May 7, 2001

CASE SUMMARY: Claimant alleged that without notice or disclosure, respondent changed his long-standing customer account that charged only for individual transactions to an account that had a yearly management fee.

ARBITRATOR'S REPORT: See Attached Exhibit A.

Claim Data

Claim: \$9,332.35
Punitive: \$15,000.00
Interest: \$9,332.34
Filing Fees: \$.00
Other: \$.00

Award Data

Award: \$8,284.06
Punitive: \$.00
Interest: \$.00
Filing Fees: \$425.00
Other: \$.00

AWARD: The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) The claims of claimant against respondent Jac Stulberg are dismissed in their entirety. 2) Respondent Morgan Stanley Dean Witter is liable and shall pay to the claimant \$8,284.06. 3) All requests for punitive damages are denied. 4) All requests for interest are denied. 5) All other requests are denied. 6) The \$425.00 filing fee previously deposited with NASD Dispute Resolution, Inc. by the claimant, shall be retained by NASD Dispute Resolution, Inc. 7) Respondent Morgan Stanley Dean Witter is liable and shall pay claimant \$425.00 as reimbursement of the filing fee.

OTHER FEES: Pursuant to Rule 10333 of the Code, respondent Morgan Stanley Dean Witter has paid to NASD Dispute Resolution, Inc. the \$400.00 Member Surcharge previously invoiced.

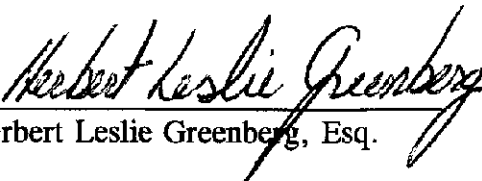
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Herbert Leslie Greenberg, Esq.

Sole Public Arbitrator

AFFIRMATION

I, Herbert Leslie Greenberg, Esq., do hereby affirm, upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.


Herbert Leslie Greenberg, Esq.


Signature Date

November 9, 2001
Date of Service (For NASD-DR office use only)

STATEMENT OF DECISION

The only direct evidence of what document(s) Ashen received consists of his statement.

The Choice agreement fee-based account was suggested by Stulberg "in conjunction with" a covered call option writing strategy.

"After ... mid-November 1999, in the following weeks, he [Stulberg] assumed you [Ashen] had decided against the proposal ... because he heard nothing from you with respect to the strategy. [I]n early December 1999 ... he knew that ... you would have raised the subject [call writing strategy] if you were interested." "Mr. Stulberg had no indication that you had decided on the fee-based approach until after the agreement was received at the office." "At the time of the December trades, Ashen had never told Stulberg that he had any intent to convert the account to a Choice account."

There is no statement in the Stulberg Declaration as to when Stulberg learned that Ashen had any interest in a covered call option writing program or had signed any associated documents. "Ashen at no time informed me [Stulberg] that he had executed or was going to execute the options account agreement and/or the Choice account agreement." "[N]or did I know that Ashen had returned any executed forms until after the account had been changed."

The Stulberg Declaration contains no evidence to substantiate the allegation, "Mr. Stulberg was advised of the branch receipt of the executed Choice agreement, and thus began researching for appropriate covered call transactions for your portfolio." The only reference in the Answer to a specific recommended option transaction was the *purchase* of an option as opposed to the purchase of a security against which a call option was to be sold. "Stulberg recommended the purchase of a Nokia option in early 2000. ... Ashen was uninterested in placing the trade"

The Stulberg Declaration contains no statement of: (1) advising Ashen of the approximate annual dollar amount that the Choice agreement would entail; (2) any discussion with Ashen, after MSDW's receipt of the Choice agreement, of covered call option writing strategy or specific effort made with regard thereto; (3) any discussion with Ashen for one year of whether the Choice fee program was or would be beneficial to Ashen.

The Golub Declaration, dealing with standard branch office operating procedures, states that forms received are not forwarded to the relevant Financial Advisor "for processing." There is no statement as to whether any procedure existed at the material times which would have caused Stulberg to be informed of the account document changes.

From the evidence presented and/or easily available evidence not presented, the factual conclusions reached are: (1) Ashen was provided with a signature page only of the Choice agreement and signed it without realizing the commission structure to be associated with a covered

call option writing strategy; (2) Stulberg assumed that Ashen was not interested in the proposed covered call option writing strategy; (3) Stulberg made no effort on behalf of Ashen associated with a covered call option writing strategy; (4) Ashen could have been more careful in reading his account's monthly statements, however, such did not cause MSDW to implement any act to its detriment.