

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

---

In the Matter of the Arbitration Between:

Morgan Stanley Dean Witter, Inc., (Claimant) vs. Thomas Boone, (Respondent)

Case Number: 01-02551

Hearing Site: New York, New York

---

**REPRESENTATION OF PARTIES**

Claimant, Morgan Stanley Dean Witter, Inc., hereinafter referred to as "Claimant": Diane C. Fischer, Esq., Kane & Fischer, Ltd., Chicago, IL.

Respondent, Thomas Boone, hereinafter referred to as "Respondent": Roger A. Serruto, Esq., Law Offices of Roger A. Serruto, West Orange, NJ.

**CASE INFORMATION**

Statement of Claim filed on or about: May 14, 2001.

Response to Counterclaim filed by Claimant on or about: August 24, 2001.

Claimant signed the Uniform Submission Agreement.

Statement of Answer and Counterclaim filed by Respondent on or about: August 1, 2001.

Respondent signed the Uniform Submission Agreement: August 1, 2001.

**CASE SUMMARY**

Claimant asserted the following cause of action: breach of Promissory Note.

Unless specifically admitted in his Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: execution of the Promissory Note was part and parcel of the terms under which Respondent agreed to become employed by Claimant; the provisions of the Promissory Note were dependent upon other promises and assurances given to Respondent by Claimant; and Respondent resigned as a result of Claimant's failure to have carried out many of the representations and assurances extended by Claimant to Respondent in its effort to induce Respondent to commence employment with it, as a result of which Respondent's obligations under the Promissory Note are rendered null and void.

In his Counterclaim, Respondent asserted the following causes of action: false representations; breach of representations and assurances; and failure to disclose critical information.

Unless specifically admitted in its Response, Claimant denied the allegations made in the Counterclaim and asserted the following defenses: Respondent failed to state a claim upon which relief may be granted; Respondent's claims are barred under the doctrines of unclean hands, laches, waiver, and estoppel; and Respondent failed to mitigate any damages he may have suffered.

### **RELIEF REQUESTED**

Claimant requested:

- a. The principal balance due and owing under the Promissory Note in the amount of \$340,000.00;
- b. Interest accrued during the term of the Promissory Note at the contract rate of 7%, totaling \$10,759.65;
- c. Interest at the contract rate of 7% per annum (\$65.21 per day) on the balance due and owing under the Promissory Note from January 26, 2001 to the date of payment; and
- d. Any and all further relief that the Panel deems just and proper.

In his Answer and Counterclaim, Respondent requested:

- a. Compensatory and consequential damages in the amount of \$5,000,000.00;
- b. Punitive damages; and
- c. Attorneys' fees and costs.

In its Response, Claimant requested that the Counterclaim be dismissed, and that Claimant be awarded the full amount of its claim, including attorneys' fees and costs incurred in defending against Respondent's frivolous claims.

### **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. Respondent is liable for and shall pay to Claimant the sum of \$204,000.00 as compensatory damages.
2. Respondent's Counterclaim is hereby dismissed in its entirety.
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	= \$1,000.00
Counterclaim filing fee	= \$ 600.00

#### **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, Inc. is a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$4,500.00

#### **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:

Four (4) Pre-hearing sessions with Panel x \$1,200.00	= \$4,800.00
Pre-hearing conferences:	
January 22, 2002	1 session
March 6, 2002	1 session
March 27, 2002	1 session
September 4, 2002	1 session

Two (2) Hearing sessions x \$1,200.00	= \$2,400.00
<u>Hearing Date: September 10, 2002</u> <u>2 sessions</u>	
Total Forum Fees	= \$7,200.00

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

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 6,600.00
<u>Forum Fees</u>	<u>= \$ 7,200.00</u>
Total Fees	= \$14,800.00
<u>Less payments</u>	<u>= \$ 9,725.00</u>
Balance Due NASD Dispute Resolution	= \$ 5,075.00

2. Respondent is solely liable for:

<u>Counterclaim Filing Fee</u>	<u>= \$ 600.00</u>
Total Fees	= \$ 600.00
<u>Less payments</u>	<u>= \$ 4,150.00</u>
Refund Due Respondent	= \$ 3,550.00

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

**ARBITRATION PANEL**

Frank Irizarry, Esq.	-	Non-Public Arbitrator, Presiding Chair
Tama Traberman	-	Non-Public Arbitrator
David L. Becker, Esq.	-	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.

  
\_\_\_\_\_  
Frank Irizarry, Esq.  
Non-Public Arbitrator, Presiding Chair

9/24/02  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Tama Traberman  
Non-Public Arbitrator

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

\_\_\_\_\_  
David L. Becker, Esq.  
Non-Public Arbitrator

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

September 27, 2002

Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

Frank Irizarry, Esq.  
Tama Traberman  
David L. Becker, Esq.

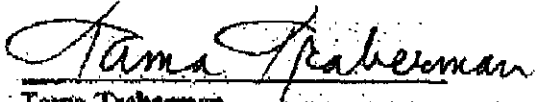
Non-Public Arbitrator, Presiding Chair  
Non-Public Arbitrator  
Non-Public Arbitrator

**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.

Frank Irizarry, Esq.  
Non-Public Arbitrator, Presiding Chair

Signature Date

  
Tama Traberman  
Non-Public Arbitrator

September 25, 2002  
Signature Date

David L. Becker, Esq.  
Non-Public Arbitrator

Signature Date

September 27, 2002  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

Frank Irizarry, Esq.	-	Non-Public Arbitrator, Presiding Chair
Tama Traberman	-	Non-Public Arbitrator
David L. Becker, Esq.	-	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.

---

Frank Irizarry, Esq.  
Non-Public Arbitrator, Presiding Chair

---

Signature Date


---

Tama Traberman  
Non-Public Arbitrator

---

Signature Date

---

  
David L. Becker, Esq.  
Non-Public Arbitrator

---

9/23/2002  
Signature Date

---

September 27, 2002  
Date of Service (For NASD Dispute Resolution use only)