

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

James R. Truho and Judith M. Truho, (Claimants) vs. Morgan Stanley Dean Witter Inc. and Kevin Monaco, (Respondents)

Case Number: 01-02640

Hearing Site: Cleveland, Ohio

REPRESENTATION OF PARTIES

Claimants, James R. Truho and Judith M. Truho, hereinafter collectively referred to as "Claimants", appeared *pro se*.

Respondents, Morgan Stanley Dean Witter Inc. ("MSDW") and Kevin Monaco ("Monaco"), hereinafter collectively referred to as "Respondents": Keith Guilfoyle, Esq., Morgan Stanley Dean Witter Inc., New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: May 18, 2001.

Claimants signed the Uniform Submission Agreement: June 1, 2001.

Joint Statement of Answer filed by Respondents on or about: August 28, 2001.

MSDW signed the Uniform Submission Agreement: August 28, 2001.

Monaco signed the Uniform Submission Agreement: August 27, 2001.

CASE SUMMARY

Claimants asserted the following causes of action: negligence; omissions; misrepresentations; and unauthorized transactions. Claimant's claim involved Kemper bonds.

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; Respondents did not act with any intent to defraud Claimants or with any willful disregard for them; Respondents did not misrepresent or omit material facts; the action or inaction of Claimants, but not Respondents, caused Claimants' alleged damages; Claimants ratified the transactions at issue; Claimants waived the claims asserted herein; Claimants, by their own conduct, and under all of the circumstances of this case, are estopped from asserting the claims herein; events occurred not caused by Respondents which constituted superseding or intervening causes of some or all of the alleged damages of which Claimants complain; any and all duties owed to Claimants were fully and

faithfully performed; Claimants' was a non-discretionary account and Respondents had no fiduciary duty to Claimants as a matter of law; there was no negligence by Respondents in the handling of Claimants' account; MSDW had in place adequate supervisory procedures which it reasonably and diligently implemented and followed; Claimants are not entitled to attorneys' fees or punitive damages as a matter of law; Claimants' claims are barred, in whole or in part, by the applicable statutes of limitations; Claimants' losses, if any, were not proximately caused by Respondents; Claimants' claims are barred, or should be reduced by, Claimants' own comparative and/or contributive negligence in the conduct and handling of his securities accounts; the handling of Claimants' account was in accordance and in compliance with applicable brokerage industry standards and guidelines and all regulatory requirements; and any causes of action asserted by Claimants as arising pursuant to alleged violations of the rules of the NASD must be dismissed, since no private right of action exists at law for violation of these rules.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$80,000.00, plus punitive damages in the amount of \$5,000.00, forum fees in the amount of \$675.00, and costs in the amount of \$500.00.

Respondents requested that the Statement of Claim be dismissed and that the costs of this proceeding be assessed against Claimants.

OTHER ISSUES CONSIDERED AND DECIDED

Prior to the commencement of testimony, Claimants made the motion that Respondent Monaco and Timothy Akins (MSDW's corporate representative) be denied the right to testify. The Panel denied said motion.

Respondents filed a motion to dismiss Claimants' claim upon completion of Claimants' presentation of their case. The Panel denied said motion.

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 dismissed in their entirety.
2. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent Monaco'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 Monaco 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	= \$ 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 Inc. 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 a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: August 14, 2002 1 session	
One (1) Pre-hearing session with Panel x \$750.00	= \$ 750.00
Pre-hearing conference: June 12, 2002 1 session	
Two (2) Hearing sessions x \$750.00	= \$1,500.00
Hearing Date: September 25, 2002 2 sessions	
Total Forum Fees	= \$2,700.00

1. The Panel has assessed \$1,350.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$1,350.00 of the forum fees jointly and severally against Respondents.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$1,350.00
Total Fees	= \$1,575.00
Less payments	= \$ 975.00
Balance Due NASD Dispute Resolution	= \$ 600.00

2. MSDW is solely liable for:

Member Fees	= \$3,100.00
Total Fees	= \$3,100.00
Less payments	= \$3,100.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally liable for:

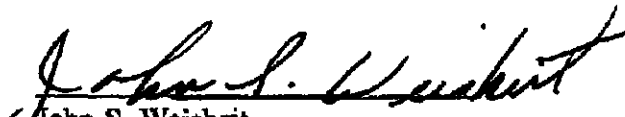
<u>Forum Fees</u>	= \$1,350.00
<u>Total Fees</u>	= \$1,350.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$1,350.00

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

ARBITRATION PANEL

John S. Weisheit	-	Public Arbitrator, Presiding Chair
Ellen Holland Keller, J.D.	-	Public Arbitrator
Steven C. Bender, CPA	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


John S. Weisheit

Public Arbitrator, Presiding Chair

10-19-02

Signature Date

Ellen Holland Keller, J.D.
Public Arbitrator

Signature Date

Steven C. Bender, CPA
Non-Public Arbitrator

Signature Date

October 30, 2002
Date of Service (For NASD Dispute Resolution use only)

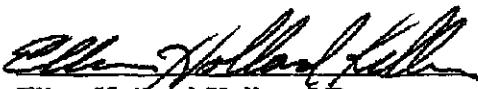
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Public Arbitrator, Presiding Chair

Signature Date



Ellen Holland Keller, J.D.
Public Arbitrator

10/17/02
Signature Date

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Non-Public Arbitrator

Signature Date

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OCT 22 2002

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