
**Award
NASD**

In the Matter of the Arbitration Between:

Name of the Claimant
Scott G. Rau

Case Number: 01-02843

Names of the Respondents
Morgan Stanley Dean Witter

Hearing Site: Boca Raton, Florida

REPRESENTATION OF PARTIES

For Scott G. Rau hereinafter referred to as "Claimant": Marc S. Dobin, Esq., Dobin & Jenks, LLP, Jupiter, Florida.

For Morgan Stanley Dean Witter hereinafter referred to as "Respondent": Bradford D. Kaufman, Esq., Joseph C. Coates, Esq., Jason M. Fedo, Esq. and Todd Zuckerbrod, Esq., Greenberg Traurig, P.A., West Palm Beach, Florida.

CASE INFORMATION

Statement of Claim filed on or about: May 25, 2001.
Claimant signed the Uniform Submission Agreement: June 15, 2001.
Statement of Answer filed by Respondent on or about: August 31, 2001.
Respondent signed the Uniform Submission Agreement: August 1, 2001.
Motion to Bar filed by Claimant on or about: January 17, 2003.
Reply to Motion to Bar filed by Respondent on or about: January 21, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: 1) breach of fiduciary duty; 2) unsuitable transactions; 3) intentional or negligent misrepresentation in violation of Fla. Stat. 517.211 and 517.301; 4) churning; 5) common law fraud; and 6) unauthorized trading. The causes of action relate to the excessive use of margin and over-concentration of unspecified technology stocks in Claimant's account.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$139,000.00, plus attorney's fees.

Respondent requested that the Statement of Claim be dismissed in its entirety, plus attorney's fees pursuant to

Fla. Stat. 517.211(6).

OTHER ISSUES CONSIDERED AND DECIDED

On or about January 24, 2003, Claimant's Motion to Bar was denied by the Panel.

At the beginning of the final hearings, NASD was informed that Jimmy L. Dodson had filed for protection under Chapter 7 of the United States Bankruptcy Code on December 27, 2002. Therefore, all proceedings were stayed with respect to Jimmy L. Dodson and the arbitration panel made no determinations with regard to Jimmy L. Dodson.

Claimant requested, at the end of the final hearings, that an Award be entered in his favor for the costs of these proceedings and submitted a Certification of Costs in support of this request. In addition, the Claimant requested that punitive damages be awarded.

The parties have agreed that the Award in this matter may be entered in counterpart copies or that a signed handwritten 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:

Respondent is liable for failing to supervise at the level required by their own procedures manual and shall pay to Claimant compensatory damages in the amount of \$23,910.00 plus interest at the rate of 5% per annum from May 25, 2001 until the date of payment of the Award.

Respondent is liable and shall pay to Claimant costs in the amount of \$6,276.46.

Respondent is not liable on the claims for unsuitable transactions, churning, common law fraud and intentional or negligent misrepresentation of material facts relative to Claimant's account in violation of Fla. Stat. 517.211 and 517.30.

Any and all claims for relief not specifically addressed herein, including the parties' request for attorney's fees pursuant to Fla. Stat. 517.211(b) and Claimant's request for punitive damages are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

Filing Fees

NASD will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$300.00

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. Accordingly, Respondent is a party to this dispute and was a member of the NASD at the time the following fees were assessed:

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

Adjournment Fees

No requests for adjournments were filed in this matter.

Injunctive Relief Fees

No injunctive relief fees were incurred during this proceeding.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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 @ \$450.00	= \$ 450.00
Pre-hearing conference: June 4, 2002 1 session	
Two (2) Pre-hearing sessions with Panel @ \$1,125.00	= \$ 2,250.00
Pre-hearing conferences: March 5, 2002 1 session	
October 15, 2002 1 session	
Six (6) Hearing sessions @ \$1,125.00	= \$ 6,750.00
Hearing Dates: January 28, 2003 2 sessions	
January 29, 2003 2 sessions	
January 30, 2003 2 sessions	
Total Forum Fees	= \$ 9,450.00

The Panel has assessed \$9,450.00 of the forum fees to Respondent.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during this proceeding.

NASD

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Fee Summary

Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 300.00
<u>Total Fees</u>	= \$ 300.00
<u>Less payments</u>	= \$ 300.00
<u>Balance Due NASD</u>	= \$ 0.00

Respondent is solely liable for:

<u>Member Fees</u>	= \$ 4,600.00
<u>Forum Fees</u>	= \$ 9,450.00
<u>Total Fees</u>	= \$ 14,050.00
<u>Less payments</u>	= \$ 6,287.50
<u>Balance Due NASD</u>	= \$ 7,762.50

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

ARBITRATION PANEL

Walter B. Bancroft

Herbert Branitsky, Esq.

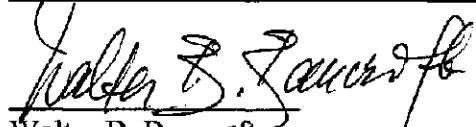
Robert C. Sauer

Public Arbitrator, Presiding Chairperson

Public Arbitrator

Non-Public Arbitrator

Concurring Arbitrators' Signatures



Walter B. Bancroft

Public Arbitrator, Presiding Chairperson

2-14-2003

Signature Date

Herbert Branitsky, Esq.

Public Arbitrator

Signature Date

Robert C. Sauer

Non-Public Arbitrator

Signature Date

Date of Service (For NASD use only)

Feb. 11, 2003 3:08PM NASD

No. 4821 P. 5

NASD

Arbitration No. 01-02843

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Herbert Branitsky, Esq.
Robert C. Sauer

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator
- Non-Public Arbitrator

Concurring Arbitrators' Signatures

Walter B. Bancroft
Public Arbitrator, Presiding Chairperson

Signature Date


Herbert Branitsky, Esq.
Public Arbitrator

Signature Date


Robert C. Sauer
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<i>Walter B. Bancroft</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Herbert Branitsky, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Robert C. Sauer</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

 Walter B. Bancroft
 Public Arbitrator, Presiding Chairperson

Signature Date

 Herbert Branitsky, Esq.
 Public Arbitrator

Signature Date

Robert C. Sauer

 Robert C. Sauer
 Non-Public Arbitrator

2-11-03

 Signature Date

Date of Service (For NASD use only)