

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

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In the Matter of the Arbitration Between:

Name of the Claimant

Case Number: 01-02849

The Joseph Kenith Revocable  
Trust Dated 1/14/99, Joseph  
Kenith Trustee, and Joseph  
M. Kenith

Names of the Respondents

Hearing Site: Boca Raton, Florida

Morgan Stanley Dean Witter  
and Andrew Kronitz

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**REPRESENTATION OF PARTIES**

For The Joseph Kenith Revocable Trust Dated 1/14/99, Joseph Kenith Trustee, and Joseph M. Kenith, hereinafter referred to as "Claimant": Darren C. Blum, Esq., Law Offices of Darren C. Blum, P.A., Plantation, Florida.

For Morgan Stanley Dean Witter ("MSDW") and Andrew Kronitz ("Kronitz"), hereinafter collectively referred to as "Respondents": Paul W. Stivers, Esq. and Thomas J. Mew, IV, Esq., Rogers & Hardin, LLP, Atlanta, Georgia and Steven Mendelson, Esq., Greenberg Traurig, P.A., West Palm Beach, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: May 30, 2001.

Claimant signed the Uniform Submission Agreement: May 21, 2001.

Statement of Answer filed by Respondents on or about: January 2, 2002.

Respondent MSDW signed the Uniform Submission Agreement: April 24, 2002.

Respondent Kronitz signed the Uniform Submission Agreement: February 14, 2002.

Emergency Motion to Amend the Statement of Claim filed by Claimant on or about: February 20, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: violation of industry rules; failure to register in Florida; violation of Section 517.301 of the Florida Statutes; breach of contract; breach of fiduciary duty; failure to properly diversify Claimant's portfolio; failure to follow instructions; common law fraud; negligence; and, failure to adequately supervise. The causes of action relate to the purchase and sale of shares of numerous stocks in Claimant's account including, but not limited to: Sycamore Networks; Priceline.Com; Ebay; Infospace, Inc.; JDS Uniphase Corp.; and, Verisign, Inc.

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

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$3,300,000.00, plus interest at the legal rate from the date of purchase, or reasonable market return, rescission, attorney's fees to be determined by a court of competent jurisdiction, punitive damages, costs and any other relief deemed just and proper.

Respondents requested judgment dismissing Claimant's claims, expungement of all references to this matter from Respondent Kronitz's registration records maintained by the NASD Central Registration Depository ("CRD"), assessment of all costs and expenses of this proceeding against Claimant and any other relief deemed just and proper.

### **OTHER ISSUES CONSIDERED AND DECIDED**

During a pre-hearing conference with the Panel on February 21, 2003, Respondents verbally objected to Claimant's Emergency Motion to Amend the Statement of Claim. Thereafter, on or about February 21, 2003, the Panel issued an order which denied Claimant's Emergency Motion to Amend the Statement of Claim.

The parties have agreed that the Award in this matter may be executed in counterpart copies.

### **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 MSDW is found liable to Claimant on the claim of failure to adequately supervise. In addition, Respondent MSDW is found liable pursuant to the NASD Letter of Acceptance, Waiver and Consent No. CAF030025. As such, Respondent MSDW shall pay to Claimant compensatory damages in the amount of \$100,000.00, pre- and post-judgment interest specifically excluded.

The Panel finds no violations of law under Section 517.301 of the Florida Statutes.

Claimant's claims against Respondent Kronitz are denied in their entirety.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages and Respondent Kronitz's request for expungement, are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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 = \$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, the member firm is a party.

Member surcharge	= \$2,500.00
Pre-hearing process fee	= \$600.00
Hearing process fee	= \$4,500.00

#### **Adjournment Fees**

No requests for adjournment were filed in this matter.

#### **Injunctive Relief Fees**

No injunctive relief fees were incurred in this matter.

#### **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: January 17, 2003	1 session

Five (5) Pre-hearing sessions with Panel @ \$1,200.00	= \$6,000.00
Pre-hearing conferences: April 19, 2002	1 session
November 18, 2002	1 session
November 26, 2002	1 session
December 6, 2002	1 session
February 21, 2003	1 session

Twelve (12) Hearing sessions @ \$1,200.00	= \$14,400.00
Hearing Dates: February 24, 2003	2 sessions
February 25, 2003	2 sessions
February 26, 2003	2 sessions
February 27, 2003	2 sessions
May 15, 2003	2 sessions

May 16, 2003

2 sessions

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Total Forum Fees	= \$20,850.00
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The Panel has assessed \$10,425.00 of the forum fees to Claimant.

The Panel has assessed \$10,425.00 of the forum fees to Respondent MSDW.

**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 are 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 in this matter.

**FEE SUMMARY**

Claimant is solely liable for:

Initial Filing Fee	= \$600.00
Forum Fees	= \$10,425.00
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Total Fees	= \$11,025.00
Less payments	= \$1,800.00
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Balance Due NASD Dispute Resolution	= \$9,225.00

Respondent MSDW is solely liable for:

Member Fees	= \$7,600.00
Forum Fees	= \$10,425.00
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Total Fees	= \$18,025.00
Less payments	= \$7,600.00
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Balance Due NASD Dispute Resolution	= \$10,425.00

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

**ARBITRATION PANEL**

Monroe Mitchell	-	Public Arbitrator, Presiding Chair
Robert J. Saex	-	Public Arbitrator
David A. Pracker	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/

05/21/03

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Monroe Mitchell  
Public Arbitrator, Presiding Chair

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Signature Date

/s/

05/23/03

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Robert J. Saex  
Public Arbitrator

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Signature Date

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05/22/03

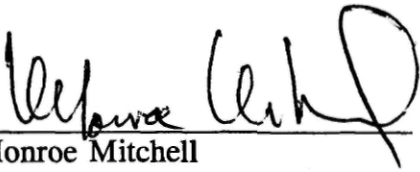
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David A. Pracker  
Non-Public Arbitrator

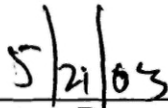
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Public Arbitrator, Presiding Chair

  
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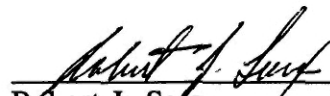
  
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