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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Maria Sagarnaga

Case Number: 02-04897

Names of the Respondents  
Morgan Stanley Dean Witter & Co.  
Sean Monahan

Hearing Site: Boca Raton, Florida

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Nature of the Dispute: Customer vs. Member and Associated Person.

**REPRESENTATION OF PARTIES**

For Maria Sagarnaga, hereinafter referred to as "Claimant": William J. Brown, Esq., Miami, Florida.

For Morgan Stanley Dean Witter & Co. ("MSDW") and Sean Monahan ("Monahan"), hereinafter collectively referred to as "Respondents": Peter W. Homer, Esq. and Brian A. Briz, Esq., Homer & Bonner, P.A., Miami, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: August 20, 2002.

Claimant signed the Uniform Submission Agreement: July 15, 2002.

Statement of Answer filed by Respondents on or about: December 13, 2002.

Respondent MSDW signed the Uniform Submission Agreement: January 7, 2003.

Respondent Monahan signed the Uniform Submission Agreement: January 7, 2003.

**CASE SUMMARY**

Claimant asserted the following: Respondents engaged in excessive account activity or "churning"; Respondents' investment recommendations were unsuitable; Respondents breached their fiduciary duty; Respondents engaged in unauthorized trading; and, Respondents made misrepresentations to Claimant. The causes of action relate to purchase and sale of unspecified securities products in Claimant's account.

Respondents denied all allegations of wrongdoing and asserted various defenses and affirmative defenses.

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$100,000.00; punitive damages in the amount of \$100,000.00; interest; restitution of all fees, commissions, interest paid and other costs incurred by Claimant in effecting the transactions in her accounts; costs; attorney's fees; and, any other relief deemed just and proper.

Respondent requested that all claims against them be dismissed, that Respondents be awarded their costs, that Respondents be permitted to seek their attorneys' fees in a court of law and that the Panel order the expungement of this matter from their NASD Central Registration Depository ("CRD") records.

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

On or about September 9, 2004, Claimant notified NASD Dispute Resolution that this matter had been settled.

On or about November 15, 2004, the parties submitted a proposed Stipulated Award with a request that the Panel enter the Stipulated Award expunging this matter from Respondent Monahan's NASD CRD records.

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

### **AWARD**

After considering the pleadings, the proposed Stipulated Award and the record in this matter, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimant's claims for relief are dismissed, with prejudice.

Each party is to bear its respective costs and attorneys' fees.

Any and all claims for relief not specifically addressed herein, including Claimant's requests for punitive damages and attorney's fees, are denied, with prejudice.

The Panel recommends the expungement of all references to the above captioned arbitration from Respondent Monahan's public and non-public registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Monahan must obtain confirmation from a court of competent jurisdiction before the NASD CRD will execute the expungement directive.

### **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 = \$ 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. In this matter, the member firm Morgan Stanley Dean Witter & Co. is a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

#### **Adjournment Fees**

Adjournment granted during these proceedings:

Joint mediation adjournment requested by all parties, October 15-17, 2004. No adjournment fee assessed pursuant to Rule 10403 of the Code.

#### **Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No three-day cancellation fees were incurred in this matter.

#### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

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 the Panel @ \$1,125.00	= \$1,125.00
Pre-hearing conference: April 2, 2003 1 session	
Total Forum Fees	= \$1,125.00

Pursuant to the parties' agreement, the Panel has assessed \$562.50 of the forum fees to Claimant and \$562.50 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	= \$ 300.00
Forum Fees	= \$ 562.50
Total Fees	= \$ 862.50
Less payments	= \$ 862.50
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent MSDW is solely liable for:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 562.50
Total Fees	= \$ 5,762.50
Less payments	= \$ 5,762.50
Balance Due NASD Dispute Resolution	= \$ 0.00

**ARBITRATION PANEL**

William E. Schneider	-	Public Arbitrator, Presiding Chairperson
Cynthia B. Stone	-	Public Arbitrator
Shirley A. Castle	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/

12/17/04

Cynthia B. Stone  
Public Arbitrator

Signature Date

/s/

12/21/04

Shirley A. Castle  
Non-Public Arbitrator

Signature Date

**Neither Concurring nor Dissenting on the Settlement but Dissenting on the Expungement Arbitrator's Signature**

/s/

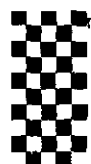
12/28/04

William E. Schneider  
Public Arbitrator, Presiding Chairperson

Signature Date

12/28/04

Date of Service (For NASD Dispute Resolution office use only)



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Public Arbitrator

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Signature Date

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Public Arbitrator, Presiding Chairperson

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**FL ARBITRATION**

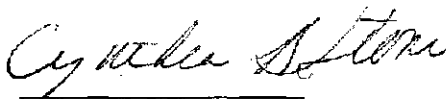
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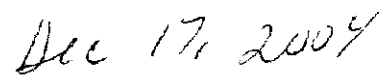
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Public Arbitrator



Signature Date

Shirley A. Castle  
Non-Public Arbitrator

Signature Date

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William E. Schneider  
Public Arbitrator, Presiding Chairperson

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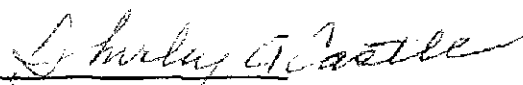
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Public Arbitrator, Presiding Chairperson

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Signature Date