

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

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In the Matter of the Arbitration Between:

Name of the Claimants

Paul Joyce and Joanne Joyce

Case Number: 02-05861

Name of the Respondents

Morgan Stanley Dean Witter Inc.  
Thomas L. Tartaglia, Jr.

Hearing Site: New York, NY

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**REPRESENTATION OF PARTIES**

Claimants Paul Joyce ("P. Joyce") and Joanne Joyce ("J. Joyce"), hereinafter collectively referred to as "Claimants": J. Anklowitz, Esq., Law Offices of J. Anklowitz, Bohemia, NY.

Respondents Morgan Stanley Dean Witter Inc. ("MSDW") and Thomas L. Tartaglia, Jr. ("Tartaglia"), hereinafter collectively referred to as "Respondents": James D. Yellen, Esq., and Edward Larkin, Esq., in-house counsel for MSDW, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: September 28, 2002.

Revised Statement of Claim filed on or about: April 21, 2003.

Claimant P. Joyce signed the Uniform Submission Agreement: September 19, 2002.

Claimant J. Joyce signed the Uniform Submission Agreement: September 20, 2002.

Joint Statement of Answer filed by Respondents on or about: December 6, 2002.

Respondent MSDW signed the Uniform Submission Agreement: December 6, 2002.

Respondent Tartaglia did not sign the Uniform Submission Agreement

**CASE SUMMARY**

Claimants asserted the following causes of action: unsuitability; negligence; fraud; misrepresentation; breach of contract; and failure to execute.

Claimants' claims involved the following stocks: AES Corp., America Online (AOL Time Warner), American International Group, BEA Systems, Brocade, Cisco, Electronic Data Systems, EMC Corp., Enron, Exodus Communications, Genentech, Intel, JDS Uniphase, Medtronic, Nokia, Nortel, PE Corp., Solectron, Sun Microsystems, Texas Instruments, Verisign, and various other securities.

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

### **RELIEF REQUESTED**

**Claimants requested:**

Compensatory Damages	\$160,000.00
Punitive Damages	unspecified
Interest	unspecified
Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary Relief	unspecified

Respondents requested that Claimants' claim be dismissed in its entirety, that Claimants be required to reimburse costs and expenses incurred, and that the panel grant any such relief deemed just and proper.

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

Respondents appeared at the May 21, 2003 hearing via telephone. At the commencement of the hearing, Respondents requested that the hearing be adjourned. The panel considered all oral arguments and determined to grant the request and adjourned the hearing until May 22, 2003.

Respondent Tartaglia did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and, having answered the claim is bound by the determination of the Panel on all issues submitted.

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, 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. MSDW is liable for and shall pay to Claimants the sum of \$8,975.00, plus interest at the rate of 9% per annum accruing from October 1, 2002 through May 23, 2003.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Tartaglia'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 Tartaglia must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.

3. Any and all relief not specifically addressed herein, including punitive damages, is 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	= \$ 300.00
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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. MSDW is a member firm that is a party.

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

#### **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 Panel @ \$1,125.00	= \$1,125.00
Pre-hearing conference: April 21, 2003 1 session	

Four (4) Hearing sessions @ \$1,125.00	= \$4,500.00
Hearing Dates: May 23, 2003 1 session	
May 22, 2003 2 sessions	
May 21, 2003 1 session	

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Total Forum Fees	= \$5,625.00
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1. The Panel has assessed \$5,625.00 of the forum fees against MSDW.

**Fee Summary**

1. Claimants are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 300.00
<u>Total Fees</u>	= \$ 300.00
<u>Less Payments</u>	= \$ 1,575.00
<u>Refund due Claimants</u>	= \$ 1,275.00

2. Respondent MSDW is solely liable for:

<u>Member Fees</u>	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 5,625.00
<u>Total Fees</u>	= \$10,825.00
<u>Less payments</u>	= \$ 2,450.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 8,375.00

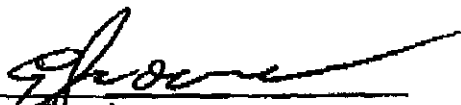
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Evan Janovic	-	Public Arbitrator, Presiding Chair
Harold Rubin	-	Public Arbitrator
Doris C. Lindbergh	-	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 in which is my award.

  
\_\_\_\_\_  
Evan Janovic  
Public Arbitrator, Presiding Chairperson

6/19/03  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Harold Rubin  
Public Arbitrator

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

\_\_\_\_\_  
Doris C. Lindbergh  
Non-Public Arbitrator

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

July 1, 2003

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

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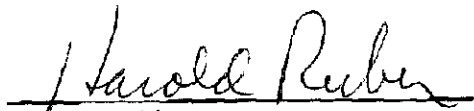
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