
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Martha Riley

Case Number: 02-06943

Name of the Respondent
Morgan Stanley Dean Witter & Co.

Hearing Site: Little Rock, Arkansas

Name of the Third-Party Respondent
Robert McDaniel

Nature of the Dispute: Customer vs. Member vs. Customer.

REPRESENTATION OF PARTIES

For Martha Riley, hereinafter referred to as "Claimant": Richard C. Downing, Esq., Richard C. Downing, P.A., Little Rock, Arkansas.

For Morgan Stanley Dean Witter & Co., hereinafter referred to as "Respondent": C. Raymond Patton, Jr., Esq. and Jason S. Taylor, Esq., Conner & Winters, P.C., Tulsa, Oklahoma and Greg S. Scharlau, Esq., Conner & Winters, P.C., Fayetteville, Arkansas.

Third-Party Respondent Robert McDaniel, hereinafter referred to as "Third-Party Respondent", appeared pro se.

CASE INFORMATION

Statement of Claim filed on or about: November 18, 2002.

Claimant signed the Uniform Submission Agreement: November 12, 2002.

Answer, Counterclaim and Third-Party Claim filed by Respondent on or about: February 10, 2003.

Respondent signed the Uniform Submission Agreement: February 10, 2003.

Claimant's Answer to Respondent's Counterclaim filed on or about: March 11, 2003.

Respondent's Motion to Dismiss filed on or about: September 3, 2003.

Motion to Confirm Jurisdiction filed by Respondent on or about: September 3, 2003.

Claimant's Response to Respondent's Motions to Confirm Jurisdiction and to Dismiss filed on or about: September 19, 2003.

Third-Party Respondent signed the Uniform Submission Agreement: March 3, 2003.

Third-Party Respondent did not submit a Statement of Answer.

CASE SUMMARY

Claimant asserted the causes of action of breach of contract and negligence. The causes of action relate to Respondent permitting a third-party to withdraw funds from Claimant's account. In addition, unless specifically admitted in her Answer, Claimant denied the allegations made in the Counterclaim and asserted various defenses.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim, asserted various defenses and filed a motion to dismiss the Statement of Claim on the following bases: Claimant's damages were not caused by Respondent; Claimant's claims are time barred under the Uniform Commercial Code; and, Claimant's claims are barred by the doctrine of laches. In addition, Respondent asserted the following causes of action in its counterclaim: negligence; failure to use due diligence; and, indemnification. In addition, Respondent asserted the following causes of action in its third-party claim: fraud; theft; forgery; indemnification; and, contribution.

In response to the Motion to Dismiss, Claimant denied the assertions therein.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$197,885.95, interest, margin interest and attorney's fees pursuant to A.C.A. §16-22-308. In addition, Claimant requested dismissal of the counterclaim.

Respondent requested that Claimant take nothing as a result of her claims. In addition, as asserted in its counterclaim, Respondent requested indemnification, costs and attorneys' fees. Further, as asserted in its third-party claim, Respondent requested indemnification, contribution, costs and attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent asserted a third-party claim against two individuals whose submission to the jurisdiction of NASD Dispute Resolution was voluntary. One individual declined to voluntarily submit to the jurisdiction of NASD Dispute Resolution. The other individual, Robert McDaniel, did voluntarily submit to the jurisdiction of NASD Dispute Resolution by executing a Uniform Submission Agreement.

On or about October 14, 2003, the Panel issued an order which denied Respondent's Motion to Confirm Jurisdiction and Motion to Dismiss.

Third-Party Respondent did not appear at the evidentiary hearing in this matter. Upon review of the file and the representations made on behalf of Respondent and the Uniform Submission Agreement filed by Third-Party Respondent, the Panel determined that Third-Party Respondent had been properly served with the Third-Party Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Third-Party Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

During the evidentiary hearing on March 16, 2004, Respondent withdrew its request for attorneys' fees.

At the close of Claimant's case on March 16, 2004, Respondent made an ore tenus motion to dismiss the Statement of Claim. Claimant objected to the motion. The Panel granted the motion.

The parties present at the evidentiary hearing 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:

Claimant's claims are dismissed in their entirety.

Respondent's Counterclaim and Third-Party Claim are denied in their entirety.

Any and all claims for relief not specifically addressed herein, including Claimant's claim for attorney's fees pursuant to A.C.A. §16-22-308, are 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
Counterclaim/Third-Party Claim filing fee	= \$1,000.00

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 event giving rise to the dispute. In this matter, the member firm is a party.

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

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No requests for adjournments were filed 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:

Two (2) Pre-hearing sessions with the Panel @ \$1,125.00	= \$2,250.00
Pre-hearing conferences: September 3, 2003 1 session	
October 14, 2003 1 session	
Four (4) Hearing sessions @ \$1,125.00	= \$4,500.00
Hearing Dates: March 15, 2004 2 sessions	
March 16, 2004 2 sessions	
Total Forum Fees	= \$6,750.00

The Panel has assessed \$3,375.00 of the forum fees to Claimant.

The Panel has assessed \$3,375.00 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 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
<u>Forum Fees</u>	= \$ 3,375.00
Total Fees	= \$ 3,675.00
<u>Less payments</u>	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 2,250.00

Respondent is solely liable for:

Counterclaim/Third-Party Claim Filing Fee	= \$ 1,000.00
Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 3,375.00
Total Fees	= \$ 9,575.00
<u>Less payments</u>	= \$ 7,325.00
Balance Due NASD Dispute Resolution	= \$ 2,250.00

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

ARBITRATION PANEL

William Wright Willis	-	Public Arbitrator, Presiding Chairperson
Frances S. Fendler, J.D.	-	Public Arbitrator
George A. Sawyer	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/

03/18/04

William Wright Willis
Public Arbitrator, Presiding Chairperson

Signature Date

/s/

03/19/04

Frances S. Fendler, J.D.
Public Arbitrator

Signature Date

/s/

03/17/04

George A. Sawyer
Non-Public Arbitrator

Signature Date

03/19/04

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

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Concurring Arbitrators' Signatures

William Wright Willis

William Wright Willis
Public Arbitrator, Presiding Chairperson

3/18/84
Signature Date

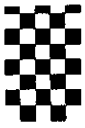
Frances S. Fendler, J.D.
Public Arbitrator

Signature Date

George A. Sawyer
Non-Public Arbitrator

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Public Arbitrator, Presiding Chairperson

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Public Arbitrator

Signature Date



George A. Sawyer
Non-Public Arbitrator

3/17/2004

Signature Date

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Public Arbitrator, Presiding Chairperson

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Public Arbitrator

3/19/04
Signature Date

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