

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Diane Hanson (Claimant) v. Morgan Stanley Dean Witter and Robert O'Herlihy
(Respondents)

Case Number: 02-07343

Hearing Site: New York, New York

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

REPRESENTATION OF PARTIES

Claimant Diane Hanson ("Hanson") hereinafter referred to as "Claimant": Richard A. Roth, Esq., The Roth Law Firm, formerly Littman, Krooks & Roth, P.C., New York, NY.

Respondents Morgan Stanley Dean Witter ("MSDW") and Robert O'Herlihy ("O'Herlihy") hereinafter collectively referred to as "Respondents": Gary E. Jackson, Esq., Morgan Stanley, New York, NY. Previously represented by: Brett Sherman, Esq., Morgan Stanley, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: December 3, 2002.

Claimant signed the Uniform Submission Agreement: October 23, 2002.

Joint Statement of Answer filed by Respondents on or about: April 4, 2003.

MSDW did not sign a Uniform Submission Agreement.

O'Herlihy did not sign a Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: unsuitability; churning; failure to provide competent professional services; breach of fiduciary duty; negligence; breach of contract; and failure to supervise. Claimant's claim involved shares of Omnicom Group stock.

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

RELIEF REQUESTED

Claimant requested compensatory damages in excess of \$256,000.00; punitive damages of not less than \$1,000,000.00; pre-award interest and post-award interest at the

maximum rate allowed by law from the date the losses were incurred to the date of this arbitration hearing; attorneys' fees, costs, and other damages the Panel may deem just and fair, including punitive damages in an amount to be determined by the Arbitration Panel, lost expectation interests of reasonable return to have been made from suitable investments; and such other and further relief the Arbitration Panel deems appropriate.

Respondents requested that the Panel dismiss the Statement of Claim in its entirety; award the costs and expenses of this arbitration, including reasonable attorneys' fees; order that all references to this matter be expunged from Respondent O'Herlihy's CRD records; and such other and further relief as is just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and, having answered the claim, and appeared and testified at the hearing, are 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, and 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:

1. Claimant's claims are dismissed in their entirety.
2. Any and all relief not specifically addressed herein, including punitive damages, is 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	= \$500.00
--------------------------	------------

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, Morgan Stanley Dean Witter is a party.

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,000.00

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:

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00	= \$ 900.00
Pre-hearing conferences: September 2, 2003 1 session	
October 9, 2003 1 session	

Two (2) Pre-hearing sessions with Panel @ \$1,200.00	= \$2,400.00
Pre-hearing conferences: June 9, 2003 1 session	
June 24, 2003 1 session	

Two (2) Hearing sessions @ \$1,200.00	= \$2,400.00
Hearing Date: November 24, 2003 2 sessions	
Total Forum Fees	= \$5,700.00

1. The Panel has assessed \$5,700.00 of the forum fees jointly and severally against Respondents.

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.

1. Claimant requested photocopies = \$39.00

Fee Summary

1. Claimant is solely liable for:	
Initial Filing Fee	= \$ 500.00
Administrative Costs	= \$ 39.00
Total Fees	= \$ 539.00
Less payments	= \$1,700.00
Refund Due	= \$1,161.00

2. MSDW is solely liable for:

<u>Member Fees</u>	= \$8,550.00
<u>Total Fees</u>	= \$8,550.00
<u>Less payments</u>	= \$8,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$5,700.00
<u>Total Fees</u>	= \$5,700.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$5,700.00

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

ARBITRATION PANEL

Richard Slavin, Esq.	-	Public Arbitrator, Presiding Chair
Arnold Linsky	-	Public Arbitrator
Peter Byer, Esq.	-	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, which is my award.



Richard Slavin, Esq.
Public Arbitrator, Presiding Chairperson

12/18/03

Signature Date

Arnold Linsky
Public Arbitrator

Signature Date

Peter Byer, Esq.
Non-Public Arbitrator

Signature Date

December 24, 2003
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Richard Slavin, Esq.	-	Public Arbitrator, Presiding Chair
Arnold Linsky	-	Public Arbitrator
Peter Byer, Esq.	-	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, which is my award.

Richard Slavin, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Arnold Linsky
Public Arbitrator

Signature Date



Peter Byer, Esq.
Non-Public Arbitrator

Signature Date

December 24, 2003

Date of Service (For NASD Dispute Resolution use only)