

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Claimant

Roland H. Wenz

v.

02-07386

Minneapolis, Minnesota

Respondent

Morgan Stanley Dean Witter, Inc. f/k/a Dean Witter Reynolds Inc.

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Nature of Dispute: Customer v. Member

**REPRESENTATION OF PARTIES**

Roland H. Wenz ("Claimant") was represented by Mark G. Ohnstad, Esq., of Thomsen & Nybeck, P.A., Edina, Minnesota.

Morgan Stanley Dean Witter, Inc. f/k/a Dean Witter Reynolds Inc. ("Respondent") was represented by Daniel Oberdorfer, Esq., of Leonard, Street and Deinard, Minneapolis, Minnesota.

**CASE INFORMATION**

The Statement of Claim was filed on or about November 22, 2002. Submission Agreement of Claimant Roland H. Wenz was signed on or about November 22, 2002.

Statement of Answer was filed by Respondent Morgan Stanley Dean Witter, Inc. f/k/a Dean Witter Reynolds Inc. on or about February 3, 2003. Submission Agreement of Respondent Morgan Stanley Dean Witter, Inc. f/k/a Dean Witter Reynolds Inc. was signed on or about February 3, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty, suitability, and misrepresentations. The causes of action related to Claimant's allegation that Respondent placed him into an aggressive investment strategy that was in contrast to his instructions, goals and risk tolerance and eventually led to a decline in his portfolio.

Respondent denied the allegations set forth in the Statement of Claim and asserted affirmative defenses including the following: Claimant failed to state a claim upon which relief may be granted; the decline in the value of the Claimant's investment made through MSDW was caused, in whole or in part, by economic and market conditions outside the control of Respondent; and Claimant's losses were proximately caused by his own decisions, conduct and/or negligence, not by any action or

inaction on the part of Respondent and as a result, Claimant's claims should be barred in whole or in part in proportion to the percentage of his negligence which contributed to the losses.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$212,000 in compensatory damages. In addition, Claimant requested attorney's fees, costs and for any other amount the Panel deemed just and equitable.

Respondent requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

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. In either case, the parties have agreed to receive conformed copies of the award while the originals remain on file with NASD Dispute Resolution ("NASD").

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Morgan Stanley Dean Witter, Inc. f/k/a Dean Witter Reynolds Inc., is liable for and shall pay to Claimant, Roland H. Wenz, the sum of Ten Thousand Dollars and No Cents (\$10,000.00) in compensatory damages;
2. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief, including punitive damages, by any party hereto are denied with prejudice; and
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys' fees.

### **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

**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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is Morgan Stanley Dean Witter, Inc. f/k/a Dean Witter Reynolds Inc.

Member surcharge = \$ 1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 2,750.00

**Forum Fees and Assessments**

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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 x \$ 1,125.00 = \$ 1,125.00

Pre-hearing conference: 05/27/2003 1 session

Four (4) Hearing sessions x \$ 1,125.00 = \$ 4,500.00

Hearing Dates: 09/26/2003 2 sessions

09/17/2003 2 sessions

Total Forum Fees = \$ 5,625.00

The Arbitration Panel has assessed \$ 2,812.50 of the forum fees to Roland H. Wenz.

The Arbitration Panel has assessed \$ 2,812.50 of the forum fees to Morgan Stanley Dean Witter, Inc. f/k/a Dean Witter Reynolds Inc.

**Fee Summary**

Claimant, Roland H. Wenz, is liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 2,812.50
Total Fees	= \$ 3,112.50
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 1,687.50

Respondent, Morgan Stanley Dean Witter, Inc. f/k/a Dean Witter Reynolds Inc., is liable for:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 2,812.50
Total Fees	= \$ 8,012.50
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 2,812.50

All balances are due to NASD Dispute Resolution pursuant to Rule 10330(g) of the Code of Arbitration

**ARBITRATION PANEL**

David R. Bergerson, Esq. - Public Arbitrator, Presiding Chair  
Phillip I. Finkelstein, Esq. - Public Arbitrator  
Jane L. Lawless - Non-Public Arbitrator

Concurring Arbitrators:

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David R. Bergerson, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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Phillip I. Finkelstein, Esq.  
Public Arbitrator

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Signature Date

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Jane L. Lawless  
Non-Public Arbitrator

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Signature Date

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Date of Service (NASD use only)

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Jane L. Lawless - Non-Public Arbitrator

Concurring Arbitrators:

David R. Bergerson  
David R. Bergerson, Esq.  
Public Arbitrator, Presiding Chair

10/15/03  
Signature Date

Phillip I. Finkelstein, Esq.  
Public Arbitrator

Signature Date

Jane L. Lawless  
Non-Public Arbitrator

Signature Date

Date of Service (NASD use only)

NASD Dispute Resolution  
Arbitration No. 02-07386  
Award Page 4 of 4

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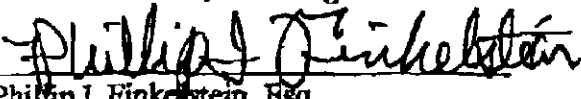
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David R. Bergerson, Esq.  
Public Arbitrator, Presiding Chair

Signature Date

  
Phillip I. Finkelstein, Esq.  
Public Arbitrator

10-14-03  
Signature Date

Jane L. Lawless  
Non-Public Arbitrator

Signature Date

Date of Service (NASD use only)

NASD Dispute Resolution  
Arbitration No. 02-07386  
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NASD Dispute Resolution, Inc.  
**RECEIVED**  
OCT 21 2003

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Jane L. Lawless - Non-Public Arbitrator

Concurring Arbitrators:

David R. Bergerson, Esq.  
Public Arbitrator, Presiding Chair

Signature Date

Phillip I. Finkelstein, Esq.  
Public Arbitrator

Signature Date

  
Jane L. Lawless  
Non-Public Arbitrator

10-15-2003  
Signature Date

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