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

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In the Matter of the Arbitration Between:

Names of the Claimants

Arlene Zwickel, Irving Zwickel,  
Arlene Zwickel IRA and Irving  
Zwickel IRA

Case Number: 02-07508

Names of the Respondents

Morgan Stanley Dean Witter, Ron Katz and  
Christopher Damante

Hearing Site: Boca Raton, Florida

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

**REPRESENTATION OF PARTIES**

For Arlene Zwickel, Irving Zwickel, Arlene Zwickel IRA and Irving Zwickel IRA, hereinafter collectively referred to as "Claimants": Layne Verebay, Esq., Layne Verebay, P.A., Ft. Lauderdale, Florida.

For Morgan Stanley Dean Witter ("MSDW"), Ron Katz ("Katz") and Christopher Damante ("Damante"), hereinafter collectively referred to as "Respondents": Joseph C. Coates, III, Esq., Greenberg Traurig, P.A., West Palm Beach, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: December 12, 2002.

Claimants signed the Uniform Submission Agreement: December 12, 2002.

Statement of Answer filed by Respondents on or about: March 18, 2003.

Respondents did not file executed Uniform Submission Agreements.

**CASE SUMMARY**

Claimants asserted the following causes of action: violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10(b)5 as promulgated thereunder; violation of Section 517.301 of the Florida Statutes; breach of fiduciary duty; negligence; and, unsuitability. The causes of action relate to the purchase and sale of shares of unspecified technology stocks in Claimants' accounts.

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

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$250,000.00, plus prejudgment interest and attorney's fees.

Respondents requested that Claimants' claims be denied in their entirety and that this matter be expunged from the NASD Central Registration Depository ("CRD") records of Respondents Katz and Damante.

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

Respondents did not file with NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, are bound by the determinations of the Panel on all issues submitted.

On or about July 21, 2004, Claimants notified NASD Dispute Resolution that this matter had settled.

On or about September 10, 2004, the parties submitted an Agreed Motion for Dismissal of all Claims and for the Entry of a Stipulated Award Directing Expungement. In the parties' motion, they requested dismissal of all claims, with prejudice, and expungement of Respondents Katz and Damante's NASD CRD records. On or about September 17, 2004, the Panel granted the parties' requests for dismissal and expungement.

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

### **AWARD**

After considering the pleadings, the Agreed Motion for Dismissal of all Claims and for the Entry of a Stipulated Award Directing Expungement and the record in this matter, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimants' claims are dismissed, with prejudice.

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

### **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 Morgan Stanley Dean Witter 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 for which fees were assessed:

April 6-8, 2004, adjournment requested by Claimants = \$ 1,125.00

The Panel has assessed \$562.50 of the adjournment fees jointly and severally to Claimants.

The Panel has assessed \$562.50 of the adjournment fees jointly and severally to Respondents.

#### **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:

Two (2) Pre-hearing sessions with the Panel @ \$1,125.00 = \$2,250.00  
Pre-hearing conferences: July 28, 2003 1 session  
March 18, 2004 1 session

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Total Forum Fees = \$2,250.00

The Panel has assessed \$1,125.00 of the forum fees jointly and severally to Claimants.  
The Panel has assessed \$1,125.00 of the forum fees jointly and severally to 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 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**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Adjournment Fee	= \$ 562.50
Forum Fees	= \$ 1,125.00
Total Fees	= \$ 1,987.50
<u>Less payments</u>	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 562.50

Respondent MSDW is solely liable for:

Member Fees	= \$ 5,200.00
Total Fees	= \$ 5,200.00
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

Adjournment Fee	= \$ 562.50
Forum Fees	= \$ 1,125.00
Total Fees	= \$ 1,687.50
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 1,687.50

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

**ARBITRATION PANEL**

Frances D. Sheehy, Esq.	-	Public Arbitrator, Presiding Chairperson
Richard Kuper, Esq.	-	Public Arbitrator
Sanford M. Naiditch	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/

09/17/04

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Frances D. Sheehy, Esq.  
Public Arbitrator, Presiding Chairperson

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Signature Date

/s/

12/02/04

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Richard Kuper, Esq.  
Public Arbitrator

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Signature Date

/s/

09/23/04

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Sanford M. Naiditch  
Non-Public Arbitrator

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Signature Date

12/03/04

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

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Arbitration No. 02-07508  
Stipulated Award Page 5

Concurring Arbitrators' Signatures



Frances D. Sheehy, Esq.  
Public Arbitrator, Presiding Chairperson

9-17-04  
Signature Date

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Richard Kuper, Esq.  
Public Arbitrator

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Signature Date

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Sanford M. Naiditch  
Non-Public Arbitrator

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Frances D. Sheehy, Esq.  
Public Arbitrator, Presiding Chairperson

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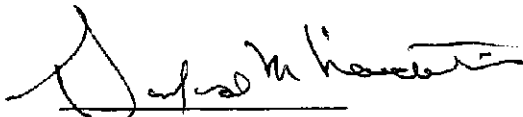
Signature Date

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Richard Kuper, Esq.  
Public Arbitrator

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Signature Date



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Sanford M. Naiditch  
Non-Public Arbitrator



Signature Date

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Public Arbitrator, Presiding Chairperson

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Signature Date



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Richard Kuper, Esq.  
Public Arbitrator

12-02-04  
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