

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

F. James Christie and Nancy H. Christie (Claimants) vs. Morgan Stanley Dean Witter, Inc., Robert Leigh Ace and Lauren Ardeen Werner (Respondents)

Case Number: 03-00114

Hearing Site: Buffalo, New York

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Nature of the Dispute: Customers v. Member and Associated Persons

**REPRESENTATION OF PARTIES**

Claimants F. James Christie ("F. Christie") and Nancy H. Christie ("N. Christie"), hereinafter collectively referred to as "Claimants": K. Wade Eaton, Esq., Chamberlain, D'Amada, Oppenheimer & Greenfield, Rochester, NY.

Respondents Morgan Stanley Dean Witter, Inc., ("Morgan Stanley"), Robert Leigh Ace ("Ace") and Lauren Arden Werner ("Werner"), hereinafter collectively referred to as "Respondents": Mark L. Parmelee, Esq., Greenberg Traurig, LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: January 3, 2003.

F. Christie signed the Uniform Submission Agreement: December 12, 2002.

N. Christie signed the Uniform Submission Agreement: December 12, 2002.

Joint Statement of Answer filed by Respondents on or about: April 23, 2003.

Morgan Stanley did not submit the Uniform Submission Agreement.

Ace signed the Uniform Submission Agreement: May 30, 2003.

Werner signed the Uniform Submission Agreement: June 2, 2003.

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of obligation to recommend only suitable investments, breach of fiduciary duty, loyalty and good faith, failure to supervise and deceptive trade practices and false advertising. The causes of action relate to unspecified 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 in the amount of \$614,629.00, interest from January 2, 2003 at 9% in the amount of \$23,491.00, forum costs, witness expenses and attorneys' fees.

Respondents requested dismissal of the Statement of Claim in its entirety, costs, expungement of Ace and Werner's CRD records and such other relief that the arbitration Panel deems fair and equitable.

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

On or about September 3, 2003, the parties agreed to select Gary R. Miles, the non-public arbitrator, as the Chairperson.

Morgan Stanley Dean Witter, Inc. 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, appeared and testified at the hearing, is bound by the determination of the Panel on all issues.

At the hearing, Ace made a Motion to Dismiss on the basis of non-involvement. The Panel granted the Motion without objection of Claimant.

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, 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. Respondents Morgan Stanley and Werner are jointly and severally liable for and shall pay to Claimants compensatory damages in the amount \$121,623.75.
2. The Panel orders expungement based on the defamatory nature of the information in NASD Central Registration Depository ("CRD") and recommends the expungement of all reference to the above captioned arbitration from Respondent Robert Leigh Ace's registration records maintained by the CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Robert Leigh Ace must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. The Panel orders expungement based on the defamatory nature of the information in NASD Central Registration Depository ("CRD") and recommends the expungement of all reference to the above captioned arbitration from Respondent Lauren Ardeen Werner's registration records maintained by the CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54,

Respondent Lauren Ardeen Werner must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

4. Any and all relief not specifically addressed herein 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	= \$ 375.00
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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 persons at the time of the event giving rise to the dispute. Accordingly, Morgan Stanley Dean Witter, Inc. is a party.

Member surcharge	= \$ 2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 4,000.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

June 15, 2004 adjournment by Claimants	= \$ 1,200.00
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May 17 – 20, 2005 adjournment by Claimants	= \$ 1,500.00
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The Panel assessed the cost of this adjournment to Respondent Morgan Stanley.

#### **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:

May 17 – 20, 2005 adjournment by Claimants	= \$ 300.00
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The Panel assessed the Three-Day Cancellation Fee to Respondent Morgan Stanley.

#### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. 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 @ \$1,200.00/session	= \$1,200.00
Pre-hearing conference: September 10, 2003	1 session

Six (6) Hearing sessions with Panel @ \$1,200.00/session	= \$7,200.00
Hearing Dates: August 8, 2006	2 sessions
August 9, 2006	2 sessions
August 10, 2006	2 sessions
<hr/> Total Forum Fees	<hr/> = \$8,400.00

1. The Panel has assessed \$4,200.00 of the forum fees to Claimants.
2. The Panel has assessed \$4,200.00 of the forum fees jointly and severally to Respondents Morgan Stanley and Werner.

**FEE SUMMARY**

1. Claimants are solely liable for:	
Initial Filing Fee	= \$ 375.00
Adjournment Fee	= \$ 1,200.00
Forum Fees	= \$ 4,200.00
<hr/> Total Fees	<hr/> = \$ 5,775.00
<u>Less payments</u>	<u>= \$ 1,575.00</u>
Balance Due NASD Dispute Resolution	= \$ 4,200.00
3. Respondent Morgan Stanley is solely liable for:	
Member Fees	= \$ 7,000.00
Adjournment Fee	= \$ 1,500.00
Three-Day Cancellation Fee	= \$ 300.00
<hr/> Total Fees	<hr/> = \$ 8,800.00
<u>Less payments</u>	<u>= \$ 7,000.00</u>
Balance Due NASD Dispute Resolution	= \$ 1,800.00
4. Respondents Morgan Stanley and Werner are jointly and severally liable for:	
Forum Fees	= \$ 4,200.00
<hr/> Total Fees	<hr/> = \$ 4,200.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 4,200.00

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

ARBITRATION PANEL

Gary R. Miles	-	Non-Public Arbitrator, Presiding Chairperson
Howard B. Cohen, Esq.	-	Public Arbitrator
Robert C. Pringle	-	Public Arbitrator

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.

Concurring Arbitrators' Signatures



Gary R. Miles  
Non-Public, Presiding Chairperson

8-22-06  
Signature Date

Howard B. Cohen, Esq.  
Public Arbitrator

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Signature Date

Robert C. Pringle  
Public Arbitrator

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

August 24, 2006  
Date of Service (For NASD Dispute Resolution use only)

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