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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Marilyn Linden

Case Number: 03-00124

Names of the Respondents  
Morgan Stanley Dean Witter, Inc.  
Robert S. Smith  
Robert E. Wasserman  
Stephen A. Jaffe

Hearing Site: Boca Raton, Florida

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

**REPRESENTATION OF PARTIES**

For Marilyn Linden ("Linden"), referred to herein as "Claimant": Jan Douglas Atlas, Esq. and Dale Ledbetter, Esq., Adorno & Yoss, P.A., Fort Lauderdale, Florida.

For Respondents Morgan Stanley Dean Witter, Inc. ("MSDW"), Robert S. Smith ("Smith"), Robert E. Wasserman ("Wasserman"), and Stephen A. Jaffe ("Jaffe"), hereinafter collectively referred to as "Respondents": Peter W. Homer, Esq., Homer, Bonner & Delgado, P.A., Miami, Florida.

**CASE INFORMATION**

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

Claimant signed the Uniform Submission Agreement: January 6, 2003.

Statement of Answer filed by Respondents on or about: March 17, 2003.

Respondent MSDW signed, but did not date, the Uniform Submission Agreement.

Respondent Jaffe signed the Uniform Submission Agreement: July 23, 2003.

Respondent Wasserman signed the Uniform Submission Agreement: July 25, 2003.

Respondent Smith signed the Uniform Submission Agreement: August 9, 2003.

Motion to Amend the Statement of Claim filed by Claimant on or about: August 15, 2003.

Response to Claimant's Motion to Amend the Statement of Claim filed by Respondents on or about: August 29, 2003.

Proposed Amendment to the Statement of Claim filed by Claimant on or about: August 29, 2003.

Response to Claimant's Proposed Amendment to the Statement of Claim filed by Respondents on or about: September 5, 2003.

Motion to Strike Supplemental Witness List and for Sanctions filed by Claimant on or about: February 12, 2004.

Response in Opposition to Claimant's Motions filed by Respondents on or about: March 1, 2004.

### **CASE SUMMARY**

Claimant asserted the following: (1) Respondents breached their fiduciary duty; (2) Respondents were negligent in the handling of Claimant's account; (3) Respondent MSDW failed to supervise; (4) Respondents made fraudulent statements and misrepresentations; (5) Respondents engaged in excessive account activity or "churning"; and (6) Respondents failed to observe the standards of commercial honor and principles of trade required by the NASD. The causes of action relate to the purchase in Claimant's Individual Retirement Account of a Hartford variable annuity and MSDW Aggressive Equity Fund B shares, as well as the purchase in Claimant's individual account of unspecified high-tech stocks and mutual funds.

Unless specifically admitted in their Answer, Respondents denied all allegations of wrongdoing and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in excess of \$400,000.00, an unspecified amount of punitive damages, disgorgement and restitution of all earnings, profits, compensation and benefits received by Respondents, rescission of all monies and other consideration paid or given by Claimant to Respondent involving the sale by Respondents of annuity products, interest, costs, attorney's fees, and such other relief as deemed just and proper.

Respondents requested that all claims against them be dismissed, that they be awarded their costs and be permitted to seek their fees in a court of law, and that the Panel order expungement of this matter from Respondents Smith's, Wasserman's and Jaffe's Central Registration Depository ("CRD") records.

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

On or about September 18, 2003, the Panel issued an Order which granted Claimant's motion to amend the Statement of Claim.

On or about March 30, 2004, the Panel issued an Order which denied Claimant's motion to strike witness list and for sanctions.

On or about May 10, 2004, the parties notified NASD Dispute Resolution that this matter had been resolved.

On or about May 14, 2004, the parties filed with NASD Dispute Resolution a notice indicating that the parties reached a verbal agreement to settle this matter and would be submitting an expungement request for the Panel's approval.

On or about July 16, 2004, the parties filed with NASD Dispute Resolution the Stipulated Award for review and approval by the Panel.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a

handwritten, signed Stipulated Award may be entered.

### AWARD

After considering the pleadings, the proposed Stipulated Award submitted by the parties and the record in this matter, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims for relief, including claims under Chapter 517 of the Florida Statutes, are dismissed with prejudice, with each party to bear its respective costs and attorney's fees.
2. Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages and attorney's fees, are denied with prejudice.
3. The Panel recommends the expungement of all references to the above-captioned arbitration from Respondents Smith's, Wasserman's and Jaffe's public and non-public registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notice to Member 99-09 and 99-54, Respondents Smith, Wasserman and Jaffe must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

### FEES

Pursuant to the NASD Code of Arbitration Procedure (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
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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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent MSDW is a member firm and party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00
Total Member Fees	= \$5,200.00

#### Adjournment Fees

No adjournments were requested 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.

Injunctive relief fees were not assessed 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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with the Panel @ \$1,125.00/session	= \$ 2,250.00
Pre-hearing conferences:	
August 15, 2003	1 session
September 16, 2003	1 session
Seven (7) Hearing sessions @ \$1,125.00/session	= \$ 7,875.00
Hearing Dates:	
January 13, 2004	2 sessions
January 15, 2004	2 sessions
January 16, 2004	2 sessions
May 10, 2004	1 session
<hr/> Total Forum Fees	<hr/> = \$10,125.00

Pursuant to the agreement of the parties, the Panel has assessed forum fees as follows:

\$2,531.25 to Claimant; and  
\$7,593.75 to Respondent MSDW.

**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.

There were no administrative costs incurred in this matter.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 2,531.25
Total Fees	= \$ 2,831.25
Less Payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 1,406.25

Respondent MSDW is solely liable for:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 7,593.75
Total Fees	= \$12,793.75

<u>Less Payments</u>	<u>= \$ 5,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 7,593.75

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

**ARBITRATION PANEL**

Monica I. Salis, Esq.	-	Public Arbitrator, Presiding Chairperson
Sterling F. Tremayne	-	Public Arbitrator
Allen J. Lefton	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/s/\_\_\_\_\_  
Monica I. Salis, Esq.  
Public Arbitrator, Presiding Chairperson

July 27, 2004  
Signature Date

\_\_\_\_\_/s/\_\_\_\_\_  
Sterling F. Tremayne  
Public Arbitrator

July 27, 2004  
Signature Date

\_\_\_\_\_/s/\_\_\_\_\_  
Allen J. Lefton  
Non-Public Arbitrator

July 27, 2004  
Signature Date

July 30, 2004  
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution  
Arbitration No. 03-00124  
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Less Payments

= \$ 5,200.00

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= \$ 7,593.75

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Public Arbitrator  
Non-Public Arbitrator

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Public Arbitrator, Presiding Chairperson

7/27/04  
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Signature Date

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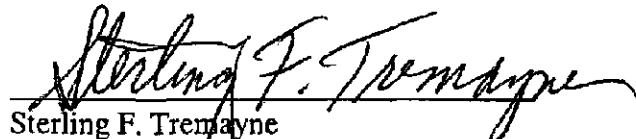
ARBITRATION PANEL

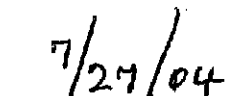
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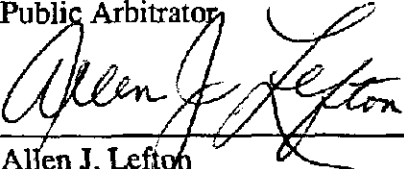
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