

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimant

Timothy S. Van Name

v.

03-00206

Denver, Colorado

Respondents

Morgan Stanley Dean Witter, Inc. and Rick Schoen

Nature of Dispute: Customer v. Member and Associated Person

REPRESENTATION OF PARTIES

Timothy S. Van Name ("**Claimant**") was represented by Kevin L. McDowell, Esq., of Buchholz, McDowell & Norman Boulder, Colorado.

Morgan Stanley Dean Witter, Inc. ("**MSDW**") and Rick Schoen ("**Schoen**"), hereinafter referred to as ("**Respondents**"), were represented by Mauricio S. Beugelmans, Esq. of Morgan Stanley Dean Witter, Inc. , San Francisco, California.

CASE INFORMATION

The Statement of Claim was filed on or about December 20, 2002. Submission Agreement of Claimant was signed on or about December 20, 2002.

A Joint Statement of Answer was filed by Respondents Morgan Stanley Dean Witter, Inc. and Rick Schoen on or about March 12, 2003. Submission Agreement of Respondent Morgan Stanley Dean Witter, Inc. was signed on or about March 12, 2003.

CASE SUMMARY

Claimant asserted causes of action including the following: breach of fiduciary duty; suitability; misrepresentations; and failure to supervise. The causes of action related to Claimant's allegation that Respondents implemented a high-risk investment strategy that was weighed heavily in technology stocks. Claimant alleged that this investment strategy was not consistent with his financial objective of a diversified portfolio with low and medium risk.

Respondents denied the allegations set forth in the Statement of Claim and asserted affirmative defenses including the following: Claimant ordered, approved, and participated in, or ratified the acts and transactions in dispute, and thus, Claimant is accordingly barred from any recovery in this action

under the doctrines of waiver, estoppel and ratification; Claimant's losses, if any, were proximately caused by his own decisions and conduct, not by any action or inaction on the part of Respondents; the decline in value of Claimant's investments made through Respondents was caused in whole or in part by market events outside the control of Respondents; and Claimant is not entitled to recovery against Respondents in this action because MSDW acted at all times in good faith and exercised reasonable diligence.

RELIEF REQUESTED

Claimants requested an award in the amount of \$232,000 in compensatory damages. In addition, Claimant requested interest, punitive damages, costs, attorney's fees, and any other relief that the Panel deemed just and equitable.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. In addition, Respondent Schoen asked for an expungement of this matter from their regulatory records maintained by the Central Registration Depository ("CRD").

OTHER ISSUES CONSIDERED & DECIDED

Respondent Rick Schoen 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 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. 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. Respondents, Morgan Stanley Dean Witter, Inc. and Rick Schoen, are jointly and severally liable for and shall pay to Claimant, Timothy S. Van Name, the sum of One Hundred Thirty Five Thousand Dollars and No Cents (\$135,000.00) in compensatory damages;

2. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, including punitive damages, 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 the non-refundable filing fee 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 person at the time of the events giving rise to the dispute. In this matter, the member firm is Morgan Stanley Dean Witter, 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 = \$ 1,125.00

Pre-hearing conference: 06/18/2003 1 session

Six (6) Hearing sessions with Panel x \$ 1,125 = \$ 6,750.00

Hearing Dates: 12/02/2003 2 sessions
12/03/2003 2 sessions

12/04/2003

2 sessions

Total Forum Fees = \$ 7,875.00

The Arbitration Panel has assessed \$ 3,937.50 of the forum fees to Timothy S. Van Name.

The Arbitration Panel has assessed \$ 3,937.50 of the forum fees jointly and severally to Morgan Stanley Dean Witter, Inc. and Rick Schoen.

Fee Summary

Claimant, Timothy S. Van Name is liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 3,937.50
<u>Total Fees</u>	= \$ 4,237.50
<u>Less payments</u>	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 2,812.50

Respondent, Morgan Stanley Dean Witter, Inc., is liable for:

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

Respondents, Morgan Stanley Dean Witter, Inc. and Rick Schoen are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 3,937.50
<u>Total Fees</u>	= \$ 3,937.50
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 3,937.50

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

ARBITRATION PANEL

James B. Eichberg - Public Arbitrator, Presiding Chair
Gerald Raskin, Esq. - Public Arbitrator
Gene R. Thornton- Non-Public Arbitrator

Concurring Arbitrators:

James B. Eichberg
Public Arbitrator, Presiding Chair

Signature Date

Gerald Raskin, Esq.
Public Arbitrator

Signature Date

Gene R. Thornton
Non-Public Arbitrator

Signature Date

12/31/03

Date of Service (NASD use only)

ARBITRATION PANEL

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Gene R. Thornton - Non-Public Arbitrator

Concurring Arbitrators:


James B. Eichberg
Public Arbitrator, Presiding Chair



Signature Date

Gerald Raskin, Esq.
Public Arbitrator

Signature Date

Gene R. Thornton
Non-Public Arbitrator

Signature Date



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Public Arbitrator, Presiding Chair

Signature Date


Gerald Raskin, Esq.
Public Arbitrator

12/30/03
Signature Date

Gene R. Thornton
Non-Public Arbitrator

Signature Date

12/31/03
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Public Arbitrator, Presiding Chair

Signature Date

Gerald Raskin, Esq.
Public Arbitrator

Signature Date

Gene R. Thornton
Non-Public Arbitrator

12/29/03
Signature Date

12/31/03
Date of Service (NASD use only)