

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimants

Case Number: 03-00534

Todd M. Pavuk Dawn L. Pavuk,
Dawn L. Pavuk as custodian for Chloe Faith Pavuk and
Dawn L. Pavuk as custodian for Noah Michael Pavuk

Name of the Respondents

Hearing Site: Baltimore, Maryland

Morgan Stanley Dean Witter, Inc. and
Timothy Michael Herb

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

REPRESENTATION OF PARTIES

Claimants, Todd M. Pavuk ("T. Pavuk"), Dawn L. Pavuk ("D. Pavuk"), Dawn L. Pavuk as custodian for Chloe Faith Pavuk, and Dawn L. Pavuk as custodian for Noah Michael Pavuk, hereinafter collectively referred to as "Claimants", were represented by Robert H. Weiss, Esq., Hooper & Weiss, L.L.C., Jericho, New York.

Respondents, Morgan Stanley Dean Witter, Inc. ("Morgan Stanley"), and Timothy Michael Herb, ("Herb"), hereinafter collectively referred to as "Respondents", were represented by Timothy E. DiDomenico, Esq., Greenberg Traurig, L.L.P., New York, New York.

CASE INFORMATION

Statement of Claim filed on January 22, 2003.

Claimants T. Pavuk and D. Pavuk signed the Uniform Submission Agreement on January 18, 2003.

Claimant D. Pavuk signed the Uniform Submission Agreement as custodian for Chloe and Noah Pavuk on February 5, 2003.

Claimants filed Motion to Bar any Defenses on July 3, 2003.

Statement of Answer filed by Respondents on July 17, 2003.

Respondents Morgan Stanley and Herb did not file Uniform Submission Agreements.

Respondents filed Response to Motion to Bar any Defenses on July 17, 2003.

CASE SUMMARY

Claimants asserted the following causes of action, among others: unsuitability, misrepresentation, breach of fiduciary duty, common law negligence, violation of Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934, failure to supervise, control person liability, and *respondeat superior*. The causes of action relate to the purchase and sale of various unspecified technology

stocks.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: the Statement of Claim fails to state a claim upon which relief may be granted, all transactions in Claimants' account were authorized by them, Claimants' acts and omissions caused their alleged damages, failure to mitigate damages, and ratification.

RELIEF REQUESTED

Claimants in their Statement of Claim requested:

Compensatory Damages	\$262,000.00
Punitive Damages	amount unspecified
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondents in their Statement of Answer requested that the Arbitration Panel (the "Panel") dismiss the Statement of Claim in its entirety, and that the Panel award Respondents the costs and expenses of this arbitration.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents Morgan Stanley and Herb did not file with NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to the Code and are bound by the determination of the Panel on all issues submitted.

By Order dated March 16, 2004 the Panel denied Claimants' Motion to Bar any Defenses

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. Respondent Morgan Stanley is liable to and shall pay to Claimants compensatory damages in the amount of \$100,000.00
2. All claims for punitive damages and attorneys' fees are denied in their entirety;
3. The parties shall bear their respective costs, except as Fees are specifically addressed

below; and

4. Any and all relief not specifically addressed herein is denied in its entirety.

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 firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Morgan Stanley is a 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

Adjournments granted during these proceedings for which fees were assessed:

September 8-10, 2004 joint adjournment request = \$ 1,125.00

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 Panel @ \$1,125.00 = \$ 2,250.00

Pre-hearing conferences	February 13, 2004	1 session
	March 15, 2004	1 session

Seven (7) Hearing sessions @ \$1,125.00 = \$ 7,875.00

Hearing Dates:	October 12, 2004	1 session
	October 13, 2004	3 sessions
	October 14, 2004	2 sessions
	October 15, 2004	1 session

Total Forum Fees = \$10,125.00

1. The Panel has assessed \$5,062.50 of the forum fees jointly and severally to Claimants.
2. The Panel has assessed \$5,062.50 of the forum fees to Respondent Morgan Stanley.

FEE SUMMARY

1. Claimants are jointly and severally assessed and shall pay the following fees:

Initial Filing Fee	= \$ 300.00
Adjournment Fee	= \$ 562.50
Forum Fees	= \$ 5,062.50
Total Fees	= \$ 5,925.00
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 4,500.00

2. Respondent Morgan Stanley is assessed and shall pay the following fees:

Member Fees	= \$ 5,200.00
Adjournment Fee	= \$ 281.25
Forum Fees	= \$ 5,062.50
Total Fees	= \$10,543.75
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 5,343.75

5. Respondent Herb is assessed and shall pay the following fees:

Adjournment Fee	= \$ 281.25
Total Fees	= \$ 281.25
Less payments	= \$ 00.00
Balance Due NASD Dispute Resolution	= \$ 281.25

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

ARBITRATION PANEL

Mona Koppel Mitnick, Esq.	-	Public Arbitrator, Presiding Chairperson
James P. O'Donnell	-	Public Arbitrator, Panelist
Charles L. Marinaccio, Esq.	-	Non-Public Arbitrator, Panelist

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Concurring Arbitrators' Signatures

Mona Mitnick

Mona Koppel Mitnick, Esq.
Public Arbitrator, Presiding Chairperson

10/26/04
Signature Date:

James P. O'Donnell
Public Arbitrator, Panelist

Signature Date:

Charles L. Marinaccio, Esq.
Non-Public Arbitrator, Panelist

Signature Date


10/27/04
Date of Service (For NASD Dispute Resolution office use only)

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Concurring Arbitrators' Signatures

Mona Koppel Mitnick, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



James P. O'Donnell
Public Arbitrator, Panelist



Signature Date

Charles L. Marinaccio, Esq.
Non-Public Arbitrator, Panelist

Signature Date



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Concurring Arbitrators' Signatures

Mona Koppel Mitnick, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

James P. O'Donnell
Public Arbitrator, Panelist

Signature Date

Charles L. Marinaccio

Charles L. Marinaccio, Esq.
Non-Public Arbitrator, Panelist

Oct. 25, 2004

Signature Date

10/27/04

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