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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Martha Liliana Asher

Case Number: 03-01624

Name of the Respondent  
Morgan Stanley Dean Witter, Inc.

Hearing Site: Boca Raton, Florida

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

For Martha Liliana Asher, hereinafter referred to as "Claimant": Howard R. Behar, Esq., Howard R. Behar, P.A., Aventura, Florida.

For Morgan Stanley Dean Witter, Inc. ("MSDW"), hereinafter referred to as "Respondent": Tucker H. Byrd, Esq., Greenberg Traurig, P.A., Orlando, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: March 5, 2003.

Claimant signed the Uniform Submission Agreement: March 5, 2003.

Statement of Answer filed by Respondent on or about: June 6, 2003.

Respondent signed the Uniform Submission Agreement: June 4, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: violations of Fla. Stat. Section 517.301, NASD Rules of Fair Practice, Article III, Section 2, and NYSE Rule 405; breach of fiduciary duty; failure to supervise; and unauthorized trading. The causes of action relate to the purchase in Claimant's account of, among other things, volatile technology stocks, including, but not limited to, Vi-tech, Peoplesoft, Atmel, RSL Communications, SED Intl Holdings, Avaya, and Telocity.

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

**RELIEF REQUESTED**

Claimant requested compensatory damages of between \$100,000.00 and \$200,000.00, a finding in the Award that Claimant is entitled to attorney's fees pursuant to Fla. Stat. 517.301/517.211, interest, costs, punitive damages, expert witness fees, and such other relief as the Panel deemed fair under the circumstances.

Respondent requested that the Panel dismiss the claim in its entirety, and that it be awarded its attorneys' fees, costs and such other and further relief as the Panel deemed just and appropriate. Respondent further requested that the Panel expunge all reference to the above captioned arbitration from the registration records of non-party Israel Harman maintained by the NASD Central Registration Depository ("CRD").

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

The parties 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, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimant's claims are dismissed with prejudice.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages and Claimant's claims for relief pursuant to Sections 517.301 and 517.211 of the Florida Statutes, are denied.

### **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, MSDW is a member firm and a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$2,750.00</u>
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:

One (1) Pre-hearing session with the Panel @ \$1,125.00/session	= \$1,125.00
Pre-hearing conference:                      October 10, 2003              1 session	
Six (6) Hearing sessions @ \$1,125.00/session	= \$6,750.00
Hearing Dates:                                  March 30, 2004                      2 sessions	
March 31, 2004                      2 sessions	
April 1, 2004                        2 sessions	
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Total Forum Fees	= \$7,875.00

The Panel has assessed forum fees of \$3,937.50 to Claimant.

The Panel has assessed forum fees of \$3,937.50 to Respondent.

#### **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 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
<u>Forum Fees</u>	= \$3,937.50
Total Fees	= \$4,237.50
<u>Less Payments</u>	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$2,812.50

Respondent is solely liable for:

Member Fees	= \$5,200.00
<u>Forum Fees</u>	= \$3,937.50
Total Fees	= \$9,137.50
<u>Less Payments</u>	= \$5,200.00

Balance Due NASD Dispute Resolution

= \$3,937.50

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

**ARBITRATION PANEL**

Stanley Seidman	-	Public Arbitrator, Presiding Chairperson
Philip Harris	-	Public Arbitrator
Robert P. Root	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/	04/06/04
_____ Stanley Seidman Public Arbitrator, Presiding Chairperson /s/	_____ Signature Date  04/05/04
_____ Philip Harris Public Arbitrator /s/	_____ Signature Date  04/05/04
_____ Robert P. Root Non-Public Arbitrator	_____ Signature Date
04/06/04	

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

NASD Dispute Resolution  
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ARBITRATION PANEL

Stanley Seidman  
Philip Harris  
Robert P. Root

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Public Arbitrator, Presiding Chairperson  
Public Arbitrator  
Non-Public Arbitrator

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Stanley Seidman  
Public Arbitrator, Presiding Chairperson

\_\_\_\_\_  
*Philip Harris*  
Philip Harris  
Public Arbitrator

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

\_\_\_\_\_  
*4-5-04*  
Signature Date

\_\_\_\_\_  
Robert P. Root  
Non-Public Arbitrator

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Signature Date

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Stanley Seidman  
Philip Harris  
Robert P. Root

Public Arbitrator, Presiding Chairperson  
Public Arbitrator  
Non-Public Arbitrator

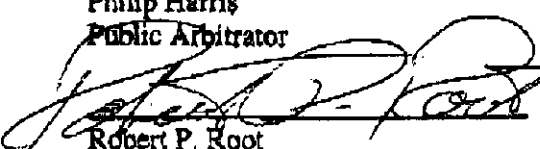
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Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Philip Harris  
Public Arbitrator

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

  
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Robert P. Root  
Non-Public Arbitrator

\_\_\_\_\_  
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Stanley Seidman  
Philip Harris  
Robert P. Root

- Public Arbitrator, Presiding Chairperson  
- Public Arbitrator  
- Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



Stanley Seidman  
Public Arbitrator, Presiding Chairperson

4-6-04  
Signature Date

Philip Harris  
Public Arbitrator

Signature Date

Robert P. Root  
Non-Public Arbitrator

Signature Date

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