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

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In the Matter of the Arbitration Between:

Name of the Claimant

Karen Klausmeyer; Karen Klausmeyer  
Custodian for Jason Klausmeyer; and,  
Karen Klausmeyer Custodian for Bryan  
Klausmeyer

Case Number: 03-03357

Names of the Respondents

Morgan Stanley Dean Witter, Inc., Barbara  
Zech, Lou Athanas, Karen Steinsieck and  
Pat Key

Hearing Site: Boca Raton, Florida

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

**REPRESENTATION OF PARTIES**

For Karen Klausmeyer; Karen Klausmeyer Custodian for Jason Klausmeyer; and, Karen Klausmeyer Custodian for Bryan Klausmeyer, hereinafter referred to as "Claimant": Gary Goodenow, Esq., Miami Shores, Florida.

For Morgan Stanley Dean Witter, Inc. ("MSDW"), Barbara Zech ("Zech"), Lou Athanas ("Athanas"), Karen Steinsieck ("Steinsieck") and Pat Key ("Key"), hereinafter collectively referred to as "Respondents": Todd A. Zuckerbrod, Esq., Greenberg Traurig, P.A., West Palm Beach, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: May 7, 2003.

Claimant signed the Uniform Submission Agreement: May 3, 2003.

Answer, Affirmative Defenses and Motion to Dismiss filed by Respondents on or about: July 7, 2003.

Claimant's Request for Hearing and Ruling on Motion to Preclude Answer, Preclude Answer From Inclusion in the Package of Pleadings and Bar Respondents From Presenting Any Matter, Arguments and Defenses at the Hearing Due to Failure to Answer Statement of Claim in Accordance With Rule 10314(b)2 and (c) of the NASD Code of Arbitration Procedure (the "Code") filed on or about: July 10, 2003.

Claimant's Request for Denial of Respondents' Motion to Dismiss filed on or about: July 19, 2003.

Response to Claimant's Motion to Preclude Answer filed by Respondents on or about: July 22, 2003.

Claimant's Counter-response, Objection to Response to Request for Hearing to Preclude Answer and Bar Respondents From Presenting Any Documents and Information, Presenting Any Matter, Arguments and Defenses at the Hearing Due to Respondents' Violation of Rules 10321(a)(b)(1) and 10322(a)(b) of the Code filed on or about: July 28, 2003.

Claimant's Motion for Partial Summary Judgment With Findings of Fact and Conclusions of Law filed on or about: April 1, 2004.

Response to Claimant's Motion for Partial Summary Judgment With Findings of Fact and Conclusions of Law filed by Respondents on or about: April 15, 2004.

Motion for Clarified Order Dismissing, With Prejudice, Respondents Athanas and Steinsieck filed by Respondents on or about: April 15, 2004.

Claimant's Omnibus Reply to Respondents' Response to Claimant's Motion for Partial Summary Judgment With Findings of Fact and Conclusions of Law and Motion for Clarified Order Dismissing, With Prejudice, Respondents Athanas and Steinsieck filed on or about: April 22, 2004.

Respondent Zech signed the Uniform Submission Agreement: June 25, 2003.

Respondent Steinsieck signed the Uniform Submission Agreement: July 1, 2003.

Respondent MSDW signed the Uniform Submission Agreement: May 31, 2003.

Respondent Athanas signed the Uniform Submission Agreement: June 30, 2003.

Respondent Key signed the Uniform Submission Agreement: July 11, 2003.

### **CASE SUMMARY**

Claimant asserted the following causes of action: unauthorized transactions; unsuitability; violation of the Florida Securities Investor Protection Act; violation of the anti-fraud provisions of the Securities and Exchange Act of 1934; breach of fiduciary duty; failure to supervise; misrepresentations and omissions; breach of contract; negligence; violation of NASD rules; common law fraud; respondeat superior; and, violations of state and federal RICO Acts. The causes of action relate to the purchase and sale of shares of Sycamore Networks, Palm, Tycom, Motorola and Cisco stock in Claimant's accounts.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various defenses. In addition, Respondents Athanas, Steinsieck and Key asserted a Motion to Dismiss the Statement of Claim on the following bases: Respondents Athanas and Steinsieck had no direct dealings with Claimant; there is no private cause of action for violations of SRO rules; there is no private cause of action for violations of a broker's internal rules; there is no private cause of action for failure to supervise; and, there was no allegation in the Statement of Claim that Respondent Key engaged in any wrongdoing.

In response to the Motion to Dismiss, Claimant denied the assertions therein.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$417,528.31, punitive damages in the amount of \$1,252,584.93, treble damages, interest calculated pursuant to Chapter 517 of the Florida Statutes, costs and any other relief deemed just and proper.

Respondents requested dismissal of the Statement of Claim, expungement of Respondents Athanas, Steinsieck and Key's NASD Central Registration Depository ("CRD") records and attorney's fees.

**OTHER ISSUES CONSIDERED AND DECIDED**

On or about December 1, 2003, the Panel issued an order which dismissed Respondents Athanas and Steinsieck from this matter and denied Claimant's Motion to Preclude Answer, Preclude Answer From Inclusion in the Package of Pleadings and Bar Respondents From Presenting Any Matter, Arguments and Defenses at the Hearing.

On or about May 7, 2004, the Panel issued an order which denied Claimant's Motion for Partial Summary Judgment With Findings of Fact and Conclusions of Law.

On or about May 8, 2004, the Panel issued an order which clarified that the dismissal of Respondents Athanas and Steinsieck was with prejudice and granted Respondents Athanas and Steinsieck's requests for expungement of this matter from their NASD CRD records.

During the evidentiary hearing on July 14, 2004, at the conclusion of Claimant's case, Respondent made an ore tenus Motion for a Directed Verdict. Claimant objected to the motion. The Panel denied Respondent's motion.

The parties have agreed that the Award in this matter may be executed in counterpart copies.

**AWARD**

After considering the pleadings and 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:

All of Claimant's claims are denied.

Respondent is the prevailing party on the claims under Chapter 517 of the Florida Statutes and may seek attorney's fees in a court proceeding. In addition, any award of attorney's fees entered by a court of competent jurisdiction shall bear interest from the date of service of the arbitration Award to the date of payment.

The Panel recommends the expungement of all references to the above captioned arbitration from Respondents Morgan Stanley Dean Witter, Inc., Barbara Zech, Lou Athanas, Karen Steinsieck and Pat Key's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondents Morgan Stanley Dean Witter, Inc., Barbara Zech, Lou Athanas, Karen Steinsieck and Pat Key must obtain confirmation from a court of competent jurisdiction before the NASD CRD will execute the expungement directive.

Any and all claims for relief not specifically addressed herein, including Claimant's requests for punitive and treble damages and for damages pursuant to the Florida Securities Investor Protection Act and Securities Exchange Act of 1934, are 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 = \$ 500.00

#### **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 persons at the time of the events giving rise to the dispute. In this matter, the member firm Morgan Stanley Dean Witter, Inc. is a party.

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 5,000.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No requests for adjournments were filed 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.

No injunctive relief fees were incurred 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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Four (4) Pre-hearing sessions with the Panel @ \$1,200.00 = \$ 4,800.00

Pre-hearing conferences:

November 11, 2003	1 session
December 1, 2003	1 session
June 18, 2004	1 session
June 22, 2004	1 session

Eight (8) Hearing sessions @ \$1,200.00 = \$ 9,600.00

Hearing Dates:

July 12, 2004	2 sessions
July 13, 2004	2 sessions
July 14, 2004	2 sessions
July 15, 2004	2 sessions

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Total Forum Fees = \$14,400.00

The Panel has assessed the total forum fees of \$14,400.00 to Claimant.

**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.

No administrative costs were incurred in this matter.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 14,400.00
Total Fees	= \$ 14,900.00
Less payments	= \$ 1,700.00
Balance Due NASD Dispute Resolution	= \$ 13,200.00

Respondent MSDW is solely liable for:

Member Fees	= \$ 5,750.00
Total Fees	= \$ 5,750.00
Less payments	= \$ 5,750.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

**ARBITRATION PANEL**

Larry A. Feldman	-	Public Arbitrator, Presiding Chairperson
S. Harvey Ziegler, Esq.	-	Public Arbitrator
Donald R. McGahan	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/

07/16/04

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Larry A. Feldman  
Public Arbitrator, Presiding Chairperson

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Signature Date

/s/

07/18/04

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S. Harvey Ziegler, Esq.  
Public Arbitrator

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Signature Date

/s/

07/17/04

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Donald R. McGahan  
Non-Public Arbitrator

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Signature Date

07/19/04

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

**Concurring Arbitrators' Signatures**

Larry A. Feldman  
Public Arbitrator, Presiding Chairperson

Signature Date

S. Harvey Ziegler, Esq.  
Public Arbitrator

Signature Date

  
Donald R. McGahan  
Non-Public Arbitrator

7/17/2004  
Signature Date

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

Concurring Arbitrators' Signatures



Larry A. Feldman  
Public Arbitrator, Presiding Chairperson

7-16-04  
Signature Date

S. Harvey Ziegler, Esq.  
Public Arbitrator

Signature Date

Donald R. McGahan  
Non-Public Arbitrator

Signature Date

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Arbitration No. 03-03357  
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Concurring Arbitrators' Signatures

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Larry A. Feldman  
Public Arbitrator, Presiding Chairperson

  
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S. Harvey Ziegler, Esq.  
Public Arbitrator

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Signature Date

  
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Signature Date

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Donald R. McGahan  
Non-Public Arbitrator

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