

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

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**In the Matter of the Arbitration Between:**

**Arlene M. Boyer, Trustee of Arlene M. Boyer Family Trust and Arlene M. Boyer, Claimant v.  
Morgan Stanley Dean Witter, Bruce Morley, and Robert H. Denton, Respondents**

**Case Number: 03-03718**

**Hearing Site: San Diego, California**

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**Nature of the Dispute: Customer v. Member and Associated Persons**

**REPRESENTATION OF PARTIES**

**For Claimant:**

**Matthew R. Miller, Esq.  
Dreher Law Firm  
San Diego, California**

**For Respondents:**

**Kevin K. Fitzgerald, Esq.  
Jones, Bell, Abbott, Fleming & Fitzgerald L.L.P.  
Los Angeles, California**

**CASE INFORMATION**

**Statement of Claim filed: May 20, 2003**

**Claimant Arlene M. Boyer, Trustee of Arlene M. Boyer Family Trust's Uniform Submission  
Agreement signed: June 10, 2003**

**Claimant Arlene M. Boyer's Uniform Submission Agreement signed: May 16, 2003**

**Joint Statement of Answer filed by Respondents: August 21, 2003**

**Respondent Morgan Stanley Dean Witter's Uniform Submission Agreement signed:  
July 28, 2003**

**Respondent Bruce Morley's Uniform Submission Agreement signed: August 6, 2003**

**Respondent Robert H. Denton's Uniform Submission Agreement signed: August 6, 2003**

### **CASE SUMMARY**

Claimant alleged breach of fiduciary duty, unsuitable investments, breach of contract, unfair business practices, fraud/failure to disclose, and failure to supervise. The dispute involved the purchase and/or sale of various securities.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested monetary damages of \$300,000.00, 10% interest, and disgorgement of commissions.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety, costs and expenses, and an award expunging the references to this proceeding from the NASD Central Registration Depository ("CRD") records of Respondents Bruce Morley and Robert H. Denton.

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

On July 7, 2003, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

On January 6, 2005, NASD Dispute Resolution received notice that the parties settled this matter in its entirety.

Claimant and Respondents have entered into a confidential settlement agreement pursuant to which Claimant has agreed to dismiss her claims against Respondents with prejudice and the parties have agreed to jointly request that an Award be issued expunging the references to this proceeding from the CRD records of Respondents Bruce Morley and Robert H. Denton.

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 and the Parties' request for this Stipulated Award, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) The Panel accepts the dismissal of each and every one of Claimant's claims asserted against Respondents with prejudice.
- 2) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Bruce Morley's registration records maintained by CRD, with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Bruce Morley must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 3) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Robert H. Denton's registration records maintained by CRD, with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Robert H. Denton must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 4) All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code of Arbitration Procedure ("Code"), the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 300.00
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#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Morgan Stanley Dean Witter is a party and the following fees are assessed:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 2,750.00</u>
<b>Total Member Fees</b>	<b>= \$ 5,200.00</b>

**Three-Day Cancellation Fees**

Three-day cancellation fees apply when a hearing on the merits is postponed or settled within three business days before the start of the first scheduled hearing session. The following three-day cancellation fees are assessed:

Cancellation of January 10 – 14, 2005 hearing: = \$ 300.00

1. The Panel assessed \$150.00 of the three-day cancellation fee to Claimant.
2. The Panel assessed \$150.00 of the three-day cancellation fee jointly and severally to Respondents.

**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:

Three (3) Pre-hearing conference sessions with a single arbitrator @ \$450.00/session = \$ 1,350.00

Pre-hearing conferences:	December 22, 2003	1 session
	June 18, 2004	1 session
	July 8, 2004	1 session

One (1) Pre-hearing conference session with the Panel @ \$1,125.00/session = \$ 1,125.00

Pre-hearing conference:	November 18, 2003	1 session
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**Total Forum Fees** = \$ 2,475.00

1. The Panel assessed \$1,237.50 of the forum fees to Claimant.
2. The Panel assessed \$1,237.50 of the forum fees jointly and severally to Respondents.

**Fee Summary**

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Three-Day Cancellation Fee	= \$ 150.00
Forum Fees	= \$ 1,237.50
Total Fees	= \$ 1,687.50
Less payments	= \$(1,425.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 262.50</b>

2. Respondent Morgan Stanley Dean Witter is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
Less payments	= \$(5,200.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

3. Respondents Morgan Stanley Dean Witter, Bruce Morley, and Robert H. Denton are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 1,237.50
Three-Day Cancellation Fee	= \$ 150.00
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 1,387.50</b>

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

ARBITRATION PANEL

James P. Murphy

Public Arbitrator, Presiding Chair


Katherine Jane Morris

Public Arbitrator

Alvin B. Asher

Non-Public Arbitrator


Concurring Arbitrators' Signatures

  
James P. Murphy  
Chair, Public Arbitrator

2-9-05  
Signature Date

Katherine Jane Morris  
Public Arbitrator

Signature Date

  
Alvin B. Asher  
Non-Public Arbitrator

02/09/05  
Signature Date

February 11, 2005  
Date of Service

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James P. Murphy	Public Arbitrator, Presiding Chair
Katherine Jane Morris	Public Arbitrator
Alvin B. Asher	Non-Public Arbitrator

Concurring Arbitrators' Signatures

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Chair, Public Arbitrator

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Signature Date

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*Katherine Jane Morris*  
Katherine Jane Morris  
Public Arbitrator

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*2/9/05*  
Signature Date

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Alvin B. Asher  
Non-Public Arbitrator

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Signature Date

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*February 11, 2005*  
Date of Service