

NASD DISPUTE RESOLUTION AWARD

NASD DISPUTE RESOLUTION

CASE: 03-05453

John Polonchak, IRA, Claimant v. Morgan Stanley DW, Inc. f/k/a Dean Witter Reynolds, Inc., Respondent.

ATTORNEYS:

Claimant, John Polonchak, IRA, ("Claimant"), appeared pro se, San Jose, CA.

Respondent, Morgan Stanley DW, Inc. f/k/a Dean Witter Reynolds, Inc., ("Respondent"), appeared through its in-house counsel, Judith M. Rosenberg, Esq., San Francisco, CA.

NATURE OF DISPUTE: Customer v. Member

DATE FILED: July 24, 2003

CASE SUMMARY: Claimant alleged that Respondent breached its fiduciary duty, and misrepresented and omitted material facts about fees incurred upon purchase of certain bond funds. Claimant maintained that due to Respondent's action, his account suffered financial losses.

Claim Data

Claim: Unspecified
Interest: Unspecified

Punitive: \$25,000.00
Filing Fees: \$425.00
Other: Unspecified

Award Data

Award: \$5,600.00
Interest: At the rate of ten percent (10%) per annum from 1/10/02 to the date of the award
Punitive: \$.00
Filing Fees: \$425.00
Other: \$.00

AWARD: The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) Respondent is liable for and shall pay to the Claimant \$5,600.00. 2) Respondent is liable for and shall pay to the Claimant interest at the rate of ten percent (10%) per annum from 1/10/02 to the date of the award. 3) All requests for punitive damages are denied. 4) All other relief requests are denied. 5) NASD Dispute Resolution shall retain the \$425.00 filing fee that the Claimant deposited previously. 6) Respondent is liable for and shall pay to the Claimant \$425.00 as reimbursement of the filing fee.

OTHER FEES: Pursuant to Rule 10333 of the Code, Respondent has paid to NASD Dispute Resolution the \$425.00 Member Surcharge invoiced previously.

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OTHER ISSUE: ARBITRATOR'S REPORT: This award is based on the fact that oral representations were made by Respondent's predecessor in interest to Claimant at the time he purchased the securities in question to the effect that the deferred contingent sales charge would be waived after the funds had been held for five(5) years. Respondent has not refuted the making of such oral representations, but has only cited the prospectuses. The representations in question were false, Claimant had a right to rely on them and was therefore damaged when he discovered their falsity. Damages are in the amount of the deferred sales charge and interest at the statutory rate of ten (10) percent runs from January 10, 2002, that date that Respondent asserted the charge after Claimant attempted to sell the funds after holding the funds for a period in excess of five (5) years.

ARBITRATOR

G.E. Craig Doupe, Esq. - Sole Public Arbitrator

AFFIRMATION

I, G.E. Craig Doupe, Esq., do hereby affirm, upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.


G.E. Craig Doupe, Esq.

March 15, 2004
Signature Date

March 19, 2004

Date of Service (For NASD-DR office use only)