
**Stipulated Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Name of the Claimant
Regina McDonough

Case Number: 03-05776

Names of the Respondents
Morgan Stanley Dean Witter
Kurt Kuhlman

Hearing Site: Orlando, Florida

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

REPRESENTATION OF PARTIES

For Regina McDonough, hereinafter referred to as "Claimant": Richard J. Lantinberg, Esq., Cooper Ridge & Lantinberg, Jacksonville, Florida.

For Morgan Stanley Dean Witter ("Morgan Stanley") and Kurt Kuhlman ("Kuhlman"), hereinafter collectively referred to as "Respondents": Robert C. Stokes, III, Esq., Vice President, Morgan Stanley Law Division, Tampa, Florida.

CASE INFORMATION

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

Claimant signed the Uniform Submission Agreement: July 28, 2003.

Statement of Answer filed by Respondents on or about: December 5, 2003.

Respondent Morgan Stanley signed the Uniform Submission Agreement: December 5, 2003.

Respondent Kuhlman signed the Uniform Submission Agreement: February 14, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: suitability; churning; over-concentration; unauthorized trading; breach of fiduciary duty; diligence as to accounts; breach of duty to "know your customer"; violation of NASD and NYSE Rules; violation of Florida's Investor Protection Statute (Chapter 517); breach of duties of loyalty, utmost honesty and good faith; breach of duty to supervise; and, breach of duty of fair dealing.

The causes of action relate to the purchase in Claimant's account of various internet, telecommunications and high technology securities, including, but not limited to, the following: Bill Serve.Com; CMGI, Inc.; Conexant Inc. Systems; Finnisar; Global Crossing; Interiors, Inc.; Nextel Communications, Inc., A; Nextel Partners, Inc., Class A; Paging Network; PSI Net; Qualcom; and, Yahoo, Inc.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Claimant was fully advised of and understood the nature of the securities purchased in her Morgan Stanley account, and granted informed consent with respect to each transaction in those accounts. Accordingly, Claimant is not entitled to any relief in this action.
2. Claimant had full knowledge of the subject transactions, and is accordingly precluded from recovery.
3. The decline in the value of Claimant's investments made through Morgan Stanley was caused in whole or in part by events outside the control of Respondents. Therefore, Claimant is not entitled to any recovery against Respondents.
4. Claimant ordered, approved, authorized, participated in, or ratified the investment transactions in dispute. Claimant is accordingly barred from any recovery in this action under the doctrines of waiver, estoppel and ratification.
5. Claimant's losses were proximately caused by her own decisions, conduct and/or negligence, not by any action or inaction in the part of Respondents. Claimant's claims are therefore barred in whole or in part in proportion to the percentage of her negligence, which contributed to her losses.
6. Claimant's claims are barred as a result of her failure to exercise due diligence and her failure to disaffirm the transactions and acts complained of in a timely matter despite her knowledge of these actions and transactions.
7. Claimant's supposed causes of action are barred as a result of her failure to minimize or mitigate her damages.
8. Claimant's relationship with Respondents is of a contractual nature and, therefore, any tort claims for economic losses are barred as a matter of law.
9. Claimant is not entitled to recovery in this action because Respondents acted at all times in good faith and exercised reasonable diligence.
10. Claimant's claims are barred in part by the applicable statutes of limitations and/or repose.
11. Claimant voluntarily assumed the risks of the transactions at issue and the investment losses allegedly incurred.
12. Respondents reserve the right to add additional affirmative or special defenses as they become known.

RELIEF REQUESTED

In her August 5, 2003 Statement of Claim, Claimant requested:

1. Compensatory damages of approximately \$140,000.00, plus interest;

2. All commissions and fees charged;
3. Attorney fees;
4. Costs, jointly and severally, against Respondents as appropriate;
5. Recovery of all costs, expenses, and disbursements, including any filing fee paid to NASD Dispute Resolution, and all the forum fees advanced;
6. Any other relief that the Panel deemed just and proper, including, if appropriate, punitive damages.

Respondents requested that Claimant's claim be dismissed in its entirety, that all references to this dispute be expunged from Respondents' NASD Central Registration Depository ("CRD") records, and that the Panel award judgment in favor of Respondents.

OTHER ISSUES CONSIDERED AND DECIDED

Prior to the evidentiary hearing, the parties fully and finally settled all claims by and between them.

On or about December 16, 2004, the parties filed with NASD Dispute Resolution a notice of settlement.

On or about January 24, 2005, the parties filed with NASD Dispute Resolution a proposed Stipulated Award for review and approval by the Panel.

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

AWARD

After considering the pleadings and the proposed Stipulated Award submitted by the parties, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. This matter is settled pursuant to a confidential settlement agreement.
2. The Panel recommends that all references to the above-captioned arbitration be expunged from Respondent Kuhlman's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Kuhlman must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive
3. The parties shall bear their respective costs, including attorney's fees, except as fees are specifically addressed below; and

4. Any and all relief not specifically addressed herein, including Claimant's request for punitive damages, is denied in its entirety.

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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Respondent Morgan Stanley 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.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session.

No three-day cancellation fees were incurred 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:

One (1) Pre-hearing session with the Panel @ \$1,125.00/session = \$1,125.00
Pre-hearing conference: April 12, 2004 1 session

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00/session = \$ 900.00
Pre-hearing conferences: August 9, 2004 1 session
August 25, 2004 1 session

Total Forum Fees = \$2,025.00

The Panel has determined to waive the forum fee in connection with the August 9, 2004 pre-hearing conference.

Pursuant to the agreement of the parties, the Panel has assessed forum fees as follows:

\$787.50 to Claimant
\$787.50 to Respondent Morgan Stanley

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.

No administrative costs were incurred in this matter.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 787.50
Total Fees	= \$ 1,087.50
Less payments	= \$ 300.00
Balance Due NASD Dispute Resolution	= \$ 787.50

Respondent Morgan Stanley is solely liable for:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 787.50
Total Fees	= \$ 5,987.50
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 787.50

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

ARBITRATION PANEL

Pasquale Anthony Mercurio, MBA	-	Public Arbitrator, Presiding Chairperson
Lauren S. Puritz, Esq.	-	Public Arbitrator
Arthur De Stefano	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/
Pasquale Anthony Mercurio, MBA
Public Arbitrator, Presiding Chairperson

February 2, 2005
Signature Date

/s/
Lauren S. Puritz, Esq.
Public Arbitrator

January 30, 2005
Signature Date

/s/
Arthur De Stefano
Non-Public Arbitrator

January 28, 2005
Signature Date

February 3, 2005
Date of Service (For NASD Dispute Resolution office use only)

ARBITRATION PANEL

Pasquale Anthony Mercurio, MBA
Lauren S. Puritz, Esq.
Arthur De Stefano

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Public Arbitrator, Presiding Chairperson
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

Pasquale Anthony Mercurio, MBA
Public Arbitrator, Presiding Chairperson

Signature Date


Lauren S. Puritz, Esq.
Public Arbitrator

1-30-05
Signature Date

Arthur De Stefano
Non-Public Arbitrator

Signature Date

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

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Public Arbitrator
Non-Public Arbitrator

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Pasquale Anthony Mercurio, MBA
Public Arbitrator, Presiding Chairperson

February 2, 2005
Signature Date

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Public Arbitrator

Signature Date

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Non-Public Arbitrator

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Public Arbitrator
Non-Public Arbitrator

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Pasquale Anthony Mercurio, MBA
Public Arbitrator, Presiding Chairperson

Signature Date

Lauren S. Puritz, Esq.
Public Arbitrator

Signature Date



Arthur De Stefano
Non-Public Arbitrator

1-28-05

Signature Date

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