

**NASD DISPUTE RESOLUTION AWARD**

**NASD DISPUTE RESOLUTION**

CASE: 03-05839

Aurelio P. Jimenez, DPM, IRA, Claimant v. Morgan Stanley DW, Inc. f/k/a Dean Witter Reynolds, Inc., Lisa K. Keene, and Jody A. Alexander, Respondents.

---

**ATTORNEYS:**

Claimant, Aurelio P. Jimenez, DPM, IRA, ("Claimant"), appeared pro se, Oxford, WI.

Respondents, Morgan Stanley DW, Inc., f/k/a Dean Witter Reynolds, Inc., Lisa K. Keene, and Jody A. Alexander, ("Respondents"), appeared through their in-house counsel, Mukya S. Poter, San Francisco, CA.

---

**NATURE OF DISPUTE:** Customer v. Member and Associated Persons

---

**DATE FILED:** August 7, 2003

---

**CASE SUMMARY:** Claimant alleged that Respondents failed to execute a sale order for Cryolife (CRY) at the price he designated previously. Claimant maintained that due to Respondents' action, his account suffered financial losses.

---

**ARBITRATOR'S REPORT:** Please find attached.

---

**Claim Data**

Claim: \$17,132.22  
Punitive: \$1,713.22  
Interest: \$1,284.92  
Attorney Fees: \$3,500.00  
Filing Fees: \$425.00  
Other: \$275.00

---

**Award Data**

Award: \$.00  
Punitive: \$.00  
Interest: \$.00  
Attorney Fees: \$.00  
Filing Fees: \$212.50  
Other: \$.00

---

**AWARD:** The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) The claims of the Claimant are dismissed in their entirety. 2) All requests for punitive damages are denied. 3) All requests for interest are denied. 4) All requests for attorney fees are denied. 5) All other requests are denied. 6) NASD Dispute Resolution shall retain the \$425.00 filing fee that the Claimant deposited previously. 6) Respondents are jointly and severally liable and shall pay to the Claimant \$212.50 as reimbursement of one-half of the filing fee.

---

**OTHER FEES:** Pursuant to Rule 10333 of the Code, Respondent Morgan Stanley DW, Inc. f/k/a Dean Witter Reynolds, Inc. has paid to NASD Dispute Resolution the \$425.00 Member Surcharge previously invoiced.

---

**ARBITRATOR**

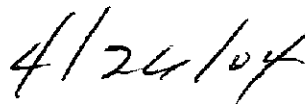
Jere W. Wiedenman, J.D. - Sole Public Arbitrator

**AFFIRMATION**

I, Jere W. Wiedenman, J.D., 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.



\_\_\_\_\_  
Jere W. Wiedenman, J.D.



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

May 14, 2004  
Date of Service (For NASD-DR office use only)

In the matter of arbitration between:

AURELIO P. JIMENEZ, DPM,

Claimaint,

Vs.

NASD No. 03-05839

MORGAN STANLEY DW, INC.,  
JODY ALEXANDER and LISA  
KEENE,

Respondents.

FINDINGS, CONCLUSIONS, AND ORDER

The claimant alleges that the respondents sold his holdings in Cryolife contrary to his authorization. He admits, however, that on December 9, 2002, he electronically presented the respondents with an order to sell at \$7.95 a share. ("... a sell order was placed for 11,420 shares of CRY at 7.95 stop.") (Jimenez Letter, Feb. 2, 2003). The respondents interpreted this message as a stop order. Dr. Jimenez does not dispute the assertion that, 45 minutes after he entered the stop order, his wife contacted the respondents and attempted to change the order to a limit order. (Answer, p. 2; Alexander Letter, Jan. 15, 2003). This fact suggests that the claimant knew he had placed a stop order.

Since the share price of Cryolife was below the stop order price, the order immediately became a market order and was executed at best-price.<sup>1</sup>

It is the conclusion of the arbitrator that the respondents are not liable to the claimant. Any lack of clarity in the questioned trade was due to the acts or omissions of the claimant.

It is, therefore, ORDERED that the claim herein be dismissed in its entirety. Costs are apportioned equally among the parties.

Dated at Milwaukee, Wisconsin, this 9 day of April, 2004.



Julie W. Wiedenman

---

<sup>1</sup> Since a stop sell order is, by definition, for a price below the current market price, it is curious that the respondents did not question the claimant's instruction. Nevertheless, the respondent was not negligent in taking the instructions of its customer at face value and treating the stop sell order as translating immediately to a market order.