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

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In the Matter of the Arbitration Between:

Names of the Claimants

Adriana Rose, individually and as Trustee  
of the Adriana Rose IRA, and as Joint Tenant, and  
Ferdinand Bonilla and Steve Rose, as Joint Tenants

Case Number: 03-06053

Names of the Respondents

Morgan Stanley Dean Witter  
Linda Kirschbaum

Hearing Site: Boca Raton, Florida

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

**REPRESENTATION OF PARTIES**

For Adriana Rose, individually and as Trustee of the Adriana Rose IRA, and as Joint Tenant, and Ferdinand Bonilla and Steve Rose, as Joint Tenants, hereinafter collectively referred to as "Claimants": Meah R. Tell, Esq., Fort Lauderdale, Florida.

For Morgan Stanley Dean Witter ("MSDW") and Linda Kirschbaum ("Kirschbaum"), hereinafter collectively referred to as "Respondents": Michael D. Wallander, Esq., Greenberg Traurig, West Palm Beach, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: September 22, 2003.

Claimants signed the Uniform Submission Agreement: September 3, 2003.

Statement of Answer filed by Respondents on or about: December 1, 2003.

Respondents signed the Uniform Submission Agreement: December 1, 2003.

**CASE SUMMARY**

Claimants asserted the following causes of action: 1) respondeat superior; 2) breach of fiduciary duty; 3) negligent supervision; 4) negligence/breach of NASD Rules of Fair Practice; 5) common law fraud; 6) negligence and gross negligence; and, 7) violation of Florida Statutes, Chapter 517. The causes of action relate to the purchase of Consecro notes in Claimants' accounts.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

**RELIEF REQUESTED**

Claimants requested compensatory damages of \$25,000.00, punitive damages, pre- and post award interest,

costs, including expert witness fees and attorneys' fees.

Respondents requested that the Statement of Claim be dismissed in its entirety and an award of costs, expenses, and such other and further relief as the Panel deemed just and proper. In addition, Respondents requested that the Panel enter an order expunging this matter from the Central Registration Depository (the "CRD") record of Respondent Kirschbaum.

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

On November 3, 2004, Claimants notified NASD Dispute Resolution that they were dismissing their claims against Respondent Kirschbaum.

On or about November 8, 2004, Claimants notified NASD Dispute Resolution that they had further settled this matter with Respondent MSDW.

On January 27, 2005, the parties submitted to NASD Dispute Resolution a Stipulated Motion for Entry of a Stipulated Award with a request for the expungement of the NASD CRD record of Respondent Kirschbaum. The parties represented that Claimants do not oppose the request for expungement.

### **AWARD**

After considering the pleadings and the Stipulated Motion for Entry of a Stipulated Award with request for expungement, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Kirschbaum's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Kirschbaum must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

### **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	= \$125.00
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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 MSDW is a party to this dispute and was a member of NASD at the time the following fees were assessed:

Member surcharge	= \$425.00
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**Adjournment Fees**

No requests for adjournments were filed 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 cancellation fees were assessed in this matter.

**Injunctive Relief Fees**

No injunctive relief fees were incurred during this proceeding.

**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:

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00	= \$900.00
Pre-hearing conferences: May 13, 2004 1 session	
September 9, 2004 1 session	
<hr/> Total Forum Fees	<hr/> = \$900.00

The Arbitrator has assessed \$450.00 of the forum fees jointly and severally to Claimants.

The Arbitrator has assessed \$450.00 of the forum fees jointly and severally to Respondents.

**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 during this proceeding.

**Fee Summary**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 125.00
Forum Fees	= \$ 450.00
<hr/> Total Fees	<hr/> = \$ 575.00
Less payments	= \$ 575.00
<hr/> Balance Due NASD Dispute Resolution	<hr/> = \$ 0.00

Respondent MSDW is solely liable for:

<u>Member Fees</u>	= \$ 425.00
<u>Total Fees</u>	= \$ 425.00
<u>Less payments</u>	= \$ 425.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 450.00
<u>Total Fees</u>	= \$ 450.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 450.00

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

**ARBITRATOR**

*Mark C. Perry, Esq.*

*Public Arbitrator, Presiding Chairperson*

**Arbitrator's Signature**

/s/  
Mark C. Perry, Esq  
Public Arbitrator, Presiding Chairperson

03/07/05  
Signature Date

03/09/05  
Date of Service (For NASD Dispute Resolution office use only)

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Respondent MSDW is solely liable for:

<u>Member Fees</u>	= \$ 125.00
<u>Total Fees</u>	= \$ 125.00
<u>Less payments</u>	= \$ 125.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 150.00
<u>Total Fees</u>	= \$ 150.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 150.00

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

**ARBITRATOR**

*Mark C. Perry, Esq.*

*Public Arbitrator, Presiding Chairperson*

Arbitrator's Signature



Mark C. Perry, Esq.  
Public Arbitrator, Presiding Chairperson

3/7/05

Signature Date

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