

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimant

Robert Dan Brown

v.

03-06132

Denver, Colorado

Respondents

Morgan Stanley Dean Witter, Inc. and Jeffrey H. Peterson

Nature of Dispute: Customer v. Member and Associated Person

REPRESENTATION OF PARTIES

Robert Dan Brown ("**Claimant**") was represented by Chad P. Hemmat, Esq., of Anderson, Hemmat & Levine, L.L.C., Denver, Colorado.

Morgan Stanley Dean Witter, Inc. ("**MSDW**") and Jeffrey H. Peterson ("**Peterson**"), hereinafter referred to as "**Respondents**" were represented by Alda Leu, Esq., and Christine Kendrick, Esq., of Wilson Sonsini Goodrich & Rosati, San Francisco, California.

CASE INFORMATION

The Statement of Claim was filed on or about August 22, 2003. The Submission Agreement of Claimant was signed on or about October 6, 2003.

The Statement of Answer was filed jointly by Respondents, Morgan Stanley Dean Witter, Inc. and Jeffrey H. Peterson, on or about March 12, 2004. The Submission Agreement of Respondent, Morgan Stanley Dean Witter, Inc., was signed on or about March 12, 2004. The Submission Agreement of Respondent, Jeffrey H. Peterson, was signed on or about March 18, 2004.

CASE SUMMARY

Claimant asserted causes of action including the following: breach of fiduciary duty, negligence, and negligent supervision. The causes of action related to Claimant's allegation that Respondents recommended three unsuitable mutual funds: Davis New York Venture B, MSDW Mid-Cap Equity Trust B, and MSDW American Opportunities B. Claimant alleged that after losses started to accrue, Respondents did nothing to protect or diversify his portfolio and as a result, his account suffered damages.

Respondents denied the allegations set forth in the Statement of Claim and asserted defenses including the following: Claimant, as the holder of a non-discretionary account, at all times controlled the activity in his account and determined which transactions would or would not be effected; Claimant knowingly assumed the risk of all trades effected in his account; any diminution in the value of Claimant's account was the result of market forces beyond Respondents' influence or control; and Claimant, as a principal who directed his agents, Jeff Peterson and MSDW, to effect securities transactions, cannot avoid responsibility for the result of such transactions.

RELIEF REQUESTED

Claimant requested an award of \$128,798 in compensatory damages, plus punitive damages, interest, costs, attorneys' fees and such other damages the panel deemed appropriate.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the originals remain on file with NASD Dispute Resolution ("NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Morgan Stanley Dean Witter, Inc. and Jeffrey H. Peterson, are jointly and severally liable for and shall pay to Claimant, Robert Dan Brown, the sum of Eighteen Thousand Five Hundred Fifty Two Dollars and No Cents (\$18,552.00) in compensatory damages;
2. Respondents, Morgan Stanley Dean Witter, Inc. and Jeffrey H. Peterson, are jointly and severally liable for and shall pay to Claimant, Robert Dan Brown, interest on the above stated sum at the Colorado statutory rate from and including December 31, 2001, through and including the date this Award is paid in full;
3. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, are denied with prejudice; and

4. Other than the Forum Fees noted below, or otherwise provided for above, the parties shall each bear all other expenses incurred by them in connection with this proceeding, including but not limited to attorneys' fees.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee = \$ 300

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. In this matter, the member firm is Morgan Stanley Dean Witter, Inc.

Member surcharge = \$ 1,700
Pre-hearing process fee = \$ 750
Hearing process fee = \$ 2,750

Adjournment Fees

Adjournments granted during these proceedings:

October 19-22, 2004, Requested by Respondents, Morgan Stanley Dean Witter, Inc. and Jeffrey H. Peterson.

(Fee Assessed by the panel) = \$ 1,125

December 1-3, 2004, Requested by Claimant, Robert Dan Brown.

(Fee Waived by the panel) = \$ 1,125

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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:

Three (3) Pre-hearing sessions with Panel x \$ 1,125 = \$ 3,375

Pre-hearing conferences:	06/02/2004	1 session
	09/07/2004	1 session
	12/01/2004	1 session

Six (6) Hearing sessions with Panel x \$ 1,125 = \$ 6,750

Hearing Dates:	02/28/2005	2 sessions
	03/01/2005	2 sessions
	03/02/2005	2 sessions

Total Forum Fees = \$ 10,125

The Arbitration Panel has assessed \$ 10,125 of the forum fees to Morgan Stanley Dean Witter, Inc.

FEE SUMMARY

Claimant, Robert Dan Brown , is solely liable for:

<u>Initial Filing Fee</u>	= \$ 300
<u>Total Fees</u>	= \$ 300
<u>Less payments</u>	= \$ 1,425
Balance Refunded By NASD Dispute Resolution	= \$ 1,125

Respondent, Morgan Stanley Dean Witter, Inc., is solely liable for:

<u>Member Fees</u>	= \$ 5,200
<u>Forum Fees</u>	= \$ 10,125
<u>Adjournment Fees</u>	= \$ 1,125
<u>Total Fees</u>	= \$ 16,450
<u>Less payments</u>	= \$ 5,850
Balance Due NASD Dispute Resolution	= \$ 10,600

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

ARBITRATION PANEL

William H. Long, Esq. - Public Arbitrator, Presiding Chair
Thaddeus J. Tecza, Ph.D - Public Arbitrator
Patti Fellows Peters - Non-Public Arbitrator

Concurring Arbitrators:

William H. Long, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Thaddeus J. Tecza, Ph.D
Public Arbitrator

Signature Date

Patti Fellows Peters
Non-Public Arbitrator

Signature Date

2/24/05
Date of Service (NASD use only)

ARBITRATION PANEL

William H. Long, Esq. - Public Arbitrator, Presiding Chair
Thaddeus J. Tecza, Ph.D - Public Arbitrator
Patti Fellows Peters - Non-Public Arbitrator

Concurring Arbitrators:

William H. Long
William H. Long, Esq.
Public Arbitrator, Presiding Chair

3-24-05
Signature Date

Thaddeus J. Tecza, Ph.D
Public Arbitrator

Signature Date

Patti Fellows Peters
Non-Public Arbitrator

Signature Date

3/24/05
Date of Service (NASD use only)

ARBITRATION PANEL

William H. Long, Esq. - Public Arbitrator, Presiding Chair
Thaddeus J. Tecza, Ph.D - Public Arbitrator
Patti Fellows Peters - Non-Public Arbitrator

Concurring Arbitrators:

William H. Long, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Thaddeus J. Tecza, Ph.D.
Thaddeus J. Tecza, Ph.D.
Public Arbitrator

3/28/05
Signature Date

Patti Fellows Peters
Non-Public Arbitrator

Signature Date

2/28/05
Date of Service (NASD use only)

ARBITRATION PANEL

William H. Long, Esq. - Public Arbitrator, Presiding Chair
Thaddeus J. Tecza, Ph.D - Public Arbitrator
Patti Fellows Peters - Non-Public Arbitrator

Concurring Arbitrators:

William H. Long, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Thaddeus J. Tecza, Ph.D
Public Arbitrator

Signature Date

Patti Peters

Patti Fellows Peters
Non-Public Arbitrator

3/28/05

Signature Date

2/28/05

Date of Service (NASD use only)