

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Catherine C. Gheen, Claimant v. Morgan Stanley Dean Witter and Patrick P. Shannon,
Respondents

Case Number: 03-06228

Hearing Site: San Francisco, California

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

REPRESENTATION OF PARTIES

For Claimant:

Anthony M. Englese, Esq.
Attorney At Law
San Francisco, California

For Respondents:

Kenneth C. Mennemeier, Esq.
Mennemeier, Glassman & Stroud,
LLP
Sacramento, California

CASE INFORMATION

Statement of Claim filed: August 27, 2003

Claimant's Uniform Submission Agreement signed: August 25, 2003

Joint Statement of Answer filed by Respondents: November 11, 2003

Respondent Morgan Stanley Dean Witter's Uniform Submission Agreement signed: October 14,
2003

Respondent Patrick P. Shannon's Uniform Submission Agreement signed: October 23, 2003

CASE SUMMARY

Claimant alleged unsuitability, failure to supervise, negligence, breach of fiduciary duty, misrepresentations, omission of fact, and violation of NASD and NYSE rules. Claimant's allegations involved various unspecified common stock traded on margin.

Respondents denied the allegations of wrongdoing set forth in Claimant's Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested \$634,149.00 in compensatory damages, tax penalties, margin costs, unspecified punitive damages, interest and costs, including attorney's fees.

Respondents requested dismissal of Claimant's Statement of Claim in its entirety, expungement of all references to this matter from Respondent Patrick P. Shannon registration records maintained by the NASD Central Registration Depository ("CRD"), and costs.

OTHER ISSUES CONSIDERED AND DECIDED

On January 13, 2005, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

On July 8, 2005, Respondents filed a Motion to Dismiss Claimant's Statement of Claim based on the absence of any damages. On July 26, 2005, Claimant filed an opposition. On August 16, 2005, Respondents filed a reply brief in support of their motion. On September 8, 2005, the Panel conducted a pre-hearing conference with the parties to hear oral argument on Respondents' motion. After due deliberation in executive session, the Panel denied Respondents' Motion to Dismiss.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

FINDING

The Panel finds that the change in the account investment strategy and management of the account allowing an increase of the margin account to approximately \$500,000.00 reflects a level of unsuitability for the Claimant who was not properly advised of the risks of margin use.

AWARD

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

- 1) Respondents are jointly and severally liable to and shall pay Claimant the sum of \$26,109.12 in compensatory damages, which represents one-half the amount of margin interest incurred on the account.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure ("Code"), the following fees are assessed:

Filing Fees

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 375.00
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Morgan Stanley Dean Witter is a party and the following fees are assessed:

Member Surcharge	= \$2,250.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$4,000.00
Total Member Fees	= \$7,000.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

(3) Pre-hearing conference sessions with a single arbitrator @ \$450.00/session = \$ 1,350.00

Pre-hearing conferences: July 1, 2005 1 session
 July 20, 2005 1 session
 September 26, 2005 1 session

(2) Pre-hearing conference sessions with the Panel @ \$1,200.00/session = \$ 2,400.00

Pre-hearing conferences: April 7, 2005 1 session
 September 8, 2005 1 session

(6) Hearing sessions @ \$1,200.00/session = \$ 7,200.00

Hearings: October 12, 2005 2 sessions
 October 13, 2005 2 sessions
 October 14, 2005 2 sessions

Total Forum Fees = **\$10,950.00**

1. The Panel assessed \$6,150.00 of the forum fees to Claimant.
2. The Panel assessed \$4,800.00 of the forum fees jointly and severally to Respondents.

Fee Summary

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 6,150.00
Total Fees	= \$ 6,525.00
Less payments	= \$(1,575.00)
Balance Due NASD Dispute Resolution	= \$ 4,950.00

2. Respondent Morgan Stanley Dean Witter is charged with the following fees and costs:

Member Fees	= \$ 7,000.00
Less payments	= \$(7,000.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Morgan Stanley Dean Witter and Patrick P. Shannon are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 4,800.00
Balance Due NASD Dispute Resolution	= \$ 4,800.00

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

ARBITRATION PANEL

Jeffrey M. Allen	-	Public Arbitrator, Presiding Chair
Keely D. Parr	-	Public Arbitrator
Robert Fisher	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures:


Jeffrey M. Allen
Chair, Public Arbitrator

10/18/05
Signature Date

Keely D. Parr
Public Arbitrator

Signature Date

Robert Fisher
Non-Public Arbitrator

Signature Date

10/20/05
Date of Service


ARBITRATION PANEL

Jeffrey M. Allen	-	Public Arbitrator, Presiding Chair
Keely D. Parr	-	Public Arbitrator
Robert Fisher	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Jeffrey M. Allen
Chair, Public Arbitrator

Signature Date


Keely D. Parr
Public Arbitrator

10/19/05
Signature Date

Robert Fisher
Non-Public Arbitrator

Signature Date

10/20/05
Date of Service

ARBITRATION PANEL

Jeffrey M. Allen	-	Public Arbitrator, Presiding Chair
Keely D. Parr	-	Public Arbitrator
Robert Fisher	-	Non-Public Arbitrator

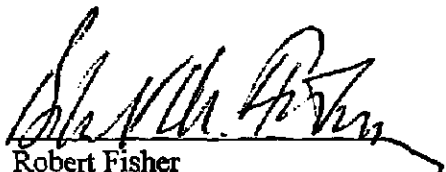
Concurring Arbitrators' Signatures

Jeffrey M. Allen
Chair, Public Arbitrator

Signature Date

Keely D. Parr
Public Arbitrator

Signature Date


Robert Fisher
Non-Public Arbitrator

10/20/05
Signature Date

10/20/05
Date of Service