

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

---

In the Matter of the Arbitration Between:

Name of the Claimant

Denise M. Zagnoli

Case Number: 04-00286

Names of the Respondents

Morgan Stanley Dean Witter, Inc.

Merle L. Zislin

Hearing Site: Tampa, Florida

---

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

**REPRESENTATION OF PARTIES**

For Denise M. Zagnoli, hereinafter referred to as "Claimant": Robert Dyer, Esq., Allen, Dyer, Doppelt Milbrath & Gilchrist PA, Orlando, Florida.

For Morgan Stanley Dean Witter, Inc. ("Morgan Stanley") and Merle L. Zislin ("Zislin"), hereinafter collectively referred to as "Respondents": Jon A. Jacobson, Esq., Greenberg Traurig, P.A., West Palm Beach, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: January 14, 2004.

Claimant signed the Uniform Submission Agreement: January 7, 2004.

Statement of Answer filed by Respondents on or about: April 10, 2004.

Respondent Morgan Stanley signed the Uniform Submission Agreement: April 2, 2004.

Respondent Zislin signed the Uniform Submission Agreement: April 26, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: violations of the Florida Securities Investor Protection Act, the Securities Act of 1934 and the Securities Exchange Act of 1933; state and federal common law of fraud; misrepresentation; unsuitability; and, negligent supervision. The causes of action relate to Claimant's investment in a Northbrook Life Insurance Company Variable Annuity.

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

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested damages of \$84,000.00, plus all costs for bringing this action and a reasonable attorneys' fee.

Respondents requested that the arbitration panel enter an award in their favor as follows:

dismissing the Claim in its entirety; assessing all forum costs against Claimant; expunging this matter from the public and non-public Central Registration Depository ("CRD") records relating to Respondent Zislin; and, granting Respondent Morgan Stanley such other and further relief as the arbitration panel deemed just and appropriate. Respondents further put Claimant on notice of their intention to seek their attorneys' fees from a court of competent jurisdiction as prevailing parties under Chapter 517, Florida Statutes.

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

During the evidentiary hearing in this matter, Claimant's expert witness testified that Claimant suffered losses of \$275,000.00, plus interest, attorneys' fees and costs.

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

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the undersigned arbitrators (the "Panel") have decided in full and final resolution of the issues submitted for determination as follows:

Respondents are liable, jointly and severally, and shall pay to Claimant the sum of \$110,000.00, pre and post-judgment interest specifically excluded.

Any and all claims for relief not specifically addressed herein, including Claimant's claim for relief pursuant to the Florida Securities Investor Protection Act and Claimant's requests for costs and attorneys' fees, are denied.

### **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	= \$225.00
--------------------------	------------

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$1,100.00
Pre-hearing process fee	= \$750.00
Hearing process fee	= \$1,700.00

### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournment fees incurred 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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with the Panel @ \$750.00	= \$750.00
Pre-hearing conference: June 8, 2004 1 session	
Five (5) Hearing sessions @ \$750.00	= \$3,750.00
Hearing Dates: May 17, 2005 2 sessions	
May 18, 2005 3 sessions	
<hr/> Total Forum Fees	<hr/> = \$4,500.00

The Panel has assessed \$2,250.00 of the forum fees to Claimant.

The Panel has assessed \$2,250.00 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 are 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	= \$225.00
Forum Fees	= \$2,250.00
<hr/>	
Total Fees	= \$2,475.00
Less payments	= \$975.00

Balance Due NASD Dispute Resolution	= \$1,500.00
-------------------------------------	--------------

Respondent Morgan Stanley is solely liable for:

Member Fees	= \$3,550.00
<hr/>	
Total Fees	= \$3,550.00
Less payments	= \$3,550.00

Balance Due NASD Dispute Resolution	= \$0.00
-------------------------------------	----------

Respondents are jointly and severally liable for:

Forum Fees	= \$2,250.00
<hr/>	
Total Fees	= \$2,250.00
Less payments	= \$0.00

Balance Due NASD Dispute Resolution	= \$2,250.00
-------------------------------------	--------------

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

**ARBITRATION PANEL**

Arthur Stern, JD	-	Public Arbitrator, Presiding Chair
Andrew J. Bolnick	-	Public Arbitrator
Sharon Lee Chernin	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/S/\_\_\_\_\_  
Arthur Stern, JD  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_/S/\_\_\_\_\_  
Andrew J. Bolnick  
Public Arbitrator

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

\_\_\_\_\_/S/\_\_\_\_\_  
Sharon Lee Chernin  
Non-Public Arbitrator

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

May 26, 2005  
Date of Service (For NASD Dispute Resolution office use only)



Andrew J. Boznick  
Public Arbitrator

5-26-05  
Signature Date

---

Sharon Lee Chernin  
Non-Public Arbitrator

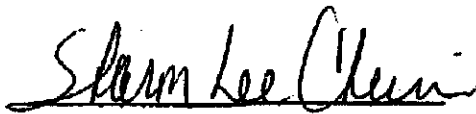
---

Signature Date

---

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

\_\_\_\_\_  
Andrew J. Bolnick  
Public Arbitrator

  
Sharon Lee Chernin  
Non-Public Arbitrator

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

  
Signature Date

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

NASD Dispute Resolution  
Arbitration No. 04-00286  
Award Page 4

### FEE SUMMARY

Claimant is solely liable for:

Initial Filing Fee	= \$225.00
Forum Fees	= \$2,250.00

---

Total Fees	= \$2,475.00
Less payments	= \$975.00

---

Balance Due NASD Dispute Resolution	= \$1,500.00
-------------------------------------	--------------

Respondent Morgan Stanley is solely liable for:

Member Fees	= \$3,550.00
-------------	--------------

---

Total Fees	= \$3,550.00
Less payments	= \$3,550.00

---

Balance Due NASD Dispute Resolution	= \$0.00
-------------------------------------	----------

Respondents are jointly and severally liable for:

Forum Fees	= \$2,250.00
------------	--------------

---

Total Fees	= \$2,250.00
Less payments	= \$0.00

---

Balance Due NASD Dispute Resolution	= \$2,250.00
-------------------------------------	--------------

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

### ARBITRATION PANEL

Arthur Stern, JD	-	Public Arbitrator, Presiding Chair
Andrew J. Bolnick	-	Public Arbitrator
Sharon Lee Chernin	-	Non-Public Arbitrator

### Concurring Arbitrators' Signatures

  
\_\_\_\_\_  
Arthur Stern, JD  
Public Arbitrator, Presiding Chair

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