

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimant

Marlene Wilkins

v.

04-00477

Denver, Colorado

Respondents

Morgan Stanley Dean Witter, Inc. and Todd S. Schmucker

Nature of Dispute: Customer v. Member and Associated Person

REPRESENTATION OF PARTIES

Marlene Wilkins ("**Claimant**") was represented by Alan C. Friedberg, Esq., of Pendleton, Friedberg, Wilson & Hennessey, P.C., Denver, Colorado.

Morgan Stanley Dean Witter, Inc. ("**MSDW**") and Todd S. Schmucker ("**Schmucker**"), hereinafter collectively referred to as ("**Respondents**"), were represented by Keith Beauchamp, Esq., of Lewis & Roca, LLP, Phoenix, Arizona.

CASE INFORMATION

The Statement of Claim was filed on or about January 22, 2004. The Submission Agreement of Claimant was signed on or about January 19, 2004.

The Statement of Answer was filed jointly by Respondents, Morgan Stanley Dean Witter, Inc., and Todd S. Schmucker, on or about April 2, 2004. The Submission Agreement of Respondent, Morgan Stanley Dean Witter, Inc., was signed on or about April 2, 2004. The Submission Agreement of Respondent, Todd S. Schmucker, was signed on or about March 29, 2004.

CASE SUMMARY

Claimant asserted causes of action including the following: violations of Colorado and federal securities acts, breach of fiduciary duty, negligence and failure to supervise. The causes of action related to Claimant's allegation that Respondents improperly invested her assets in a speculative portfolio consisting of aggressive and risky managed accounts and mutual funds. Claimant alleged that Respondents falsified information contained on her investment policy statement that misrepresented her net worth and risk tolerance. Claimant further alleged that her investment assets were to provide retirement income concentrating on the preservation of capital and diversification.

Respondents denied the allegations set forth in the Statement of Claim and asserted affirmative defenses including the following: Claimant failed to state a claim upon which relief can be granted; Claimant is not entitled to recovery due to the doctrines of ratification, waiver and estoppel; Claimant was advised of and understood the nature of the securities purchase in her MSDW account and granted informed consent with respect to each transaction in that account; Claimant had full knowledge of the transactions complained of in the Statement of Claim and is accordingly precluded from recovery; at all times MSDW reasonable followed and adhered to all compliance and supervisory procedures as well as all applicable rules of NASD and NYSE; and the decline in value of the Claimant's investment made through MSDW was caused in whole or in part by economic and market conditions outside the control of MSDW.

RELIEF REQUESTED

Claimant requested an award of \$448,000 in compensatory damages, plus, \$500,000 in punitive damages, interest, attorneys' fees, costs and such other relief the panel deemed just and 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, the evidence presented at the hearing, and post-hearing submissions, 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 Todd S. Schmucker, are jointly and severally liable for and shall pay to Claimant, Marlene Wilkins, the sum of Three Hundred Twenty Five Thousand Dollars and No Cents (\$325,000.00) in compensatory damages;
2. Respondents, Morgan Stanley Dean Witter, Inc. and Todd S. Schmucker, are jointly and severally liable for and shall pay to Claimant, Marlene Wilkins, prejudgment interest on the above referenced sum at 8% per annum from and including the date this Award is served through and including the date this Award is paid in full;

3. Respondents, Morgan Stanley Dean Witter, Inc. and Todd S. Schmucker, are jointly and severally liable for and shall pay to Claimant, Marlene Wilkins, arbitration costs in the amount of Ten Thousand Eight Hundred Sixteen Dollars and Twenty Two Cents (\$10,816.22); and
4. 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.

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 = \$ 375

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	= \$ 2,250
Pre-hearing process fee	= \$ 750
Hearing process fee	= \$ 4,000

Adjournment Fees

Adjournments granted during these proceedings:

December 14-17, 2004 (Adjournment requested by all parties)

Fee Assessed by the Panel = \$ 1,200

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:

One (1) Pre-hearing session with the Chairperson x \$ 450	= \$ 450
Pre-hearing conference: 03/16/2005 1 session	
Two (2) Pre-hearing sessions with Panel x \$ 1,200	= \$ 2,400
Pre-hearing conferences: 07/06/2004 1 session	
02/25/2005 1 session	
Seven (7) Hearing sessions with Panel x \$ 1,200	= \$ 8,400
Hearing Dates: 04/25/2005 2 sessions	
04/26/2005 2 sessions	
04/27/2005 2 sessions	
04/28/2005 1 session	
Total Forum Fees	= \$ 11,250

The Arbitration Panel has assessed \$ 11,250 of the forum fees solely to Morgan Stanley Dean Witter, Inc.

FEE SUMMARY

Claimant, Marlene Wilkins, is liable for:

Initial Filing Fee	= \$ 375
<u>Adjournment Fee</u>	= \$ 600
Total Fees	= \$ 975
<u>Less payments</u>	= \$ 1,575
Balance Refunded By NASD Dispute Resolution	= \$ 600

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

Member Fees	= \$ 7,000
<u>Forum Fees</u>	= \$ 11,250
Total Fees	= \$ 18,250

<u>Less payments</u>	= \$ 7,000
Balance Due NASD Dispute Resolution	= \$ 11,250

Respondents, Morgan Stanley Dean Witter, Inc., and Todd S. Schmucker, are jointly and severally liable for:

<u>Adjournment Fee</u>	= \$ 600
Total Fees	= \$ 600
<u>Less payments</u>	= \$ 0
Balance Due NASD Dispute Resolution	= \$ 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

Samuel L. McClaren, Esq. - Public Arbitrator, Presiding Chair
Gilbert M. Roman - Public Arbitrator
Michael E. Faber - Non-Public Arbitrator

Concurring Arbitrators:

Samuel L. McClaren, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Gilbert M. Roman
Public Arbitrator

Signature Date

Michael E. Faber
Non-Public Arbitrator

Signature Date

5/13/05

Date of Service (NASD use only)

Less payments	= \$ 7,000
Balance Due NASD Dispute Resolution	= \$ 11,250

Respondents, Morgan Stanley Dean Witter, Inc., and Todd S. Schmucker, are jointly and severally liable for:


Adjournment Fee	= \$ 600
Total Fees	= \$ 600
Less payments	= \$ 0
Balance Due NASD Dispute Resolution	= \$ 600

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ARBITRATION PANEL

Samuel L. McClaren, Esq. - Public Arbitrator, Presiding Chair
Gilbert M. Roman - Public Arbitrator
Michael E. Faber - Non-Public Arbitrator

Concurring Arbitrators:



Samuel L. McClaren, Esq.
Public Arbitrator, Presiding Chair

May 16, 2005

Signature Date

Gilbert M. Roman
Public Arbitrator

Signature Date

Michael E. Faber
Non-Public Arbitrator

Signature Date

5/18/05

Date of Service (NASD use only)

<u>Less payments</u>	= \$ 7,000
<u>Balance Due NASD Dispute Resolution</u>	= \$ 11,250

Respondents, Morgan Stanley Dean Witter, Inc., and Todd S. Schmucker, are jointly and severally liable for:

<u>Adjournment Fee</u>	= \$ 600
<u>Total Fees</u>	= \$ 600
<u>Less payments</u>	= \$ 0
<u>Balance Due NASD Dispute Resolution</u>	= \$ 600

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Concurring Arbitrators:

Samuel L. McClaren, Esq.
Public Arbitrator, Presiding Chair

Signature Date



Gilbert M. Roman
Public Arbitrator

5-16-05

Signature Date

Michael E. Faber
Non-Public Arbitrator

Signature Date

5/12/05

Date of Service (NASD use only)

Less payments	= \$ 7,000
Balance Due NASD Dispute Resolution	= \$ 11,250

Respondents, Morgan Stanley Dean Witter, Inc., and Todd S. Schmucker, are jointly and severally liable for:

Adjournment Fee	= \$ 600
Total Fees	= \$ 600
Less payments	= \$ 0
Balance Due NASD Dispute Resolution	= \$ 600

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Gilbert M. Roman - Public Arbitrator
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Concurring Arbitrators:

Samuel L. McClaren, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Gilbert M. Roman
Public Arbitrator

Signature Date



Michael E. Faber
Non-Public Arbitrator

5/13/05

Signature Date

5/18/05

Date of Service (NASD use only)