

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

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In the Matter of the Arbitration Between:

George W. Stillwaggon (Claimant) vs. Morgan Stanley Dean Witter Inc. and Kevin Burke (Respondents)

Case Number: 04-01130

Hearing Site: Albany, New York

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

**REPRESENTATION OF PARTIES**

Claimant George W. Stillwaggon ("Claimant"): Richard L. Burstein, Esq., Tuczinski, Cavalier, Burstein & Collura Albany, NY. Claimant previously appeared *pro se*.

Respondents Morgan Stanley Dean Witter Inc. ("Morgan Stanley") and Kevin Burke ("Burke") hereinafter collectively referred to as ("Respondents"): Thomas P. Brody, Esq., Morgan Stanley, Purchase, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: February 18, 2004.

Claimant signed the Uniform Submission Agreement: February 18, 2004.

Joint Statement of Answer filed by Respondents on or about: June 21, 2004.

Morgan Stanley signed the Uniform Submission Agreement: December 22, 2004.

Burke signed the Uniform Submission Agreement: December 22, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract; unsuitability; churning; breach of fiduciary duty; and failure to supervise. The causes of action relate to unspecified securities products.

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

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$110,0000.00 and punitive damages in the amount of \$330,000.00.

Respondents requested dismissal of the Statement of Claim in its entirety; expungement of this matter from the CRD record of Burke; costs; expenses; and such other and further relief as is just and proper.

**OTHER ISSUES CONSIDERED AND DECIDED.**

At the hearing, Claimant moved to amend its request for damages from \$110,000.00 to \$159,330.00. After hearing oral argument from all parties and after due deliberation by the arbitrators, the Panel determined to grant Claimant's request.

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

**AWARD**

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

1. Respondents are jointly and severally liable for and shall pay to Claimant compensatory damages in the amount of \$118,000.00 plus interest at the rate of 9% per annum accruing from January 1, 2001 until the date the Award is paid.
2. Respondents are jointly and severally liable for and shall pay to Claimant \$7,867.00 as reimbursement of its expert witness fees.
3. Respondent Morgan Stanley is liable for and shall pay to Claimant \$325.00 to reimburse Claimant for the non-refundable filing fee previously paid to NASD-DR.
4. Any and all relief not specifically addressed herein, including punitive damages, is denied.

**FEES**

Pursuant to 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	= \$ 300.00
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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 persons at the time of the events giving rise to the dispute. Accordingly, Morgan Stanley Dean Witter, Inc. is a party.

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

February 2, 3, & 4, 2005 adjournment by Claimant	= \$ 1,125.00
September 12, 13 & 14, 2005 adjournment by Respondents	= \$ 1,125.00

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. 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:

One (1) Pre-hearing session with the Panel @ \$1,125.00 per session	= \$ 1,125.00
Pre-hearing conference: September 13, 2004 1 session	
Six (6) Hearing sessions @ \$1,125.00 per session	= \$ 6,750.00
Hearing Dates: December 13, 2005 2 sessions	
December 14, 2005 2 sessions	
December 15, 2005 2 sessions	
<b>Total Forum Fees</b>	<b>= \$ 7,875.00</b>

The Panel has assessed \$7,875.00 of the forum fees against Morgan Stanley.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Adjournment Fee	= \$ 1,125.00
Total Fees	= \$ 1,425.00
Less payments	= \$ 2,125.00
Refund due Claimant	= \$ 700.00

2. Morgan Stanley is solely liable for:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 7,875.00
Total Fees	= \$ 13,075.00
Less payments	= \$ 5,850.00
Balance Due NASD Dispute Resolution	= \$ 7,225.00

3. Respondents are jointly and severally liable for:

Adjournment Fee	= \$ 1,125.00
Total Fees	= \$ 1,125.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 1,125.00

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

**ARBITRATION PANEL**

David W. Morris, Esq.	-	Public Arbitrator, Presiding Chairperson
Frank E. Wolf	-	Public Arbitrator
Marc R. Green, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

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David W. Morris, Esq.  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Frank E. Wolf  
Public Arbitrator

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

\_\_\_\_\_  
Marc R. Green, Esq.  
Non-Public Arbitrator

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

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JANUARY 30, 2006  
Date of Service (For NASD Dispute Resolution use only)

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David W. Morris  
David W. Morris, Esq.  
Public Arbitrator, Presiding Chairperson

Jan. 27, 2006  
Signature Date

Frank E. Wolf  
Frank E. Wolf  
Public Arbitrator

Signature Date

Marc R. Green, Esq.  
Marc R. Green, Esq.  
Non-Public Arbitrator

Signature Date

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NASD Dispute Resolution  
Arbitration No. 04-01130  
Award Page 4 of 4

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Frank E. Wolf  
Public Arbitrator

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Marc R. Green, Esq.  
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Signature Date

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