

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

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In the Matter of the Arbitration Between:

Name of the Claimant  
William H. Young

Case Number: 04-01393

Names of the Respondents  
Morgan Stanley Dean Witter  
Francis Lausier

Hearing Site: Tampa, Florida

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

**REPRESENTATION OF PARTIES**

For William H. Young, hereinafter referred to as "Claimant": John R. Kiefner, Jr., Esq. and Clifford J. Hunt, Esq., Kiefner & Hunt, P.A., St. Petersburg, Florida.

For Morgan Stanley Dean Witter ("Morgan Stanley") and Francis Lausier ("Lausier"), hereinafter collectively referred to as "Respondents": Colleen M. Fitzgerald, Esq., Gray Robinson, Tampa, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: February 23, 2004.

Claimant's Reply to Affirmative Defenses and Motion to Strike filed on or about: June 17, 2004.

Claimant's Clarification to Statement of Claim filed on or about: March 15, 2005.

Claimant signed the Uniform Submission Agreement: February 19, 2004.

Statement of Answer filed by Respondents on or about: May 13, 2004.

Respondent Morgan Stanley signed the Uniform Submission Agreement: May 28, 2004.

Respondent Lausier did not file an executed Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: failure to supervise; negligence; gross negligence; breach of fiduciary duty; common law fraud/fraud in the inducement; violation of specific NASD Conduct Rules-Negligence; breach of contract; and, dispute arising in connection with the business of any member of the Association. The causes of action relate to Claimant's investments in two unspecified variable annuities.

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

**RELIEF REQUESTED**

Claimant requested an award against Respondents for compensatory damages in the amount of \$414,439.00 pursuant to Section 517.211, plus statutory interest, punitive damages in an unspecified amount, costs, and such other relief as the arbitration panel deemed just and

appropriate.

Respondents requested that the arbitration panel dismiss Claimant's claims, with prejudice, after which Respondent Morgan Stanley will proceed to a court of competent jurisdiction to recover attorneys' fees as the prevailing party on Claimant's statutory claim.

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

Respondent Lausier did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

In his Motion to Strike, Claimant alleged that he has not asserted a claim under Chapter 517 of the Florida Statutes. Therefore, Respondents have no statutory basis upon which to seek fees from Claimant. In addition, Claimant asserted Respondents' defense which asserts that no private right of action exists for alleged SRO rule violations should be stricken as Claimant has not attempted to fashion a cause of action from the NASD Conduct Rules. Respondents did not file a response. In their deliberation at the conclusion of the evidentiary hearing, the arbitration panel determined that the issues raised in Claimant's Motion to Strike were deemed moot.

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:

The Panel finds for Respondents and against Claimant.

Each party shall pay its own fees and costs.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages, are 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

### **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	= \$1,700.00
Pre-hearing process fee	= \$750.00
Hearing process fee	= \$2,750.00

### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were 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 @ \$1,125.00	= \$1,125.00
Pre-hearing conference: July 6, 2004 1 session	
Six (6) Hearing sessions @ \$1,125.00	= \$6,750.00
Hearing Dates: May 3, 2005 2 sessions	
May 4, 2005 2 sessions	
May 5, 2005 2 sessions	
Total Forum Fees	= \$7,875.00

The Panel has assessed \$3,937.50 of the forum fees to Claimant.

The Panel has assessed \$3,937.50 of the forum fees to Respondent Morgan Stanley.

**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	= \$300.00
Forum Fees	= \$3,937.50
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Total Fees	= \$4,237.50
Less payments	= \$1,575.00
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Balance Due NASD Dispute Resolution	= \$2,662.50

Respondent Morgan Stanley is solely liable for:

Member Fees	= \$5,200.00
Forum Fees	= \$3,937.50
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Total Fees	= \$9,137.50
Less payments	= \$5,950.00
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Balance Due NASD Dispute Resolution	= \$3,187.50

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

**ARBITRATION PANEL**

Paul Sidney Elliott, J.D., CFP	-	Public Arbitrator, Presiding Chair
James B. Burchett, CPA	-	Public Arbitrator
Anthony J. Vignocchi	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/S/  
Paul Sidney Elliott, J.D., CFP  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_/S/\_\_\_\_\_  
James B. Burchett, CPA  
Public Arbitrator

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

\_\_\_\_\_/S/\_\_\_\_\_  
Anthony J. Vignocchi  
Non-Public Arbitrator

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


May 9, 2005  
Date of Service (For NASD Dispute Resolution office use only)

MAY. 6.2005 3:12PM NASD DISPUTE RESOLUTION

NASD Dispute Resolution

Arbitration No. 04-01393

Award Page 5



James B. Burchett, CPA  
Public Arbitrator

5/7/05  
Signature Date

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Anthony J. Vignocchi  
Non-Public Arbitrator

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

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

NASD Dispute Resolution  
Arbitration No. 04-01399  
Award Page 5

James B. Burchett, CPA  
Public Arbitrator

Signature Date

*Anthony J. Vignocchi*  
Anthony J. Vignocchi  
Non-Public Arbitrator

*5/9/2005*  
Signature Date

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

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Public Arbitrator, Presiding Chair

5/7/05  
Signature Date