
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants
A.M. and Nancy G. Tortorich

Case Number: 04-04346

Name of the Respondent
Morgan Stanley Dean Witter

Hearing Site: New Orleans, Louisiana

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For A.M. and Nancy G. Tortorich, hereinafter referred to as "Claimants": George W. Healy, IV, Esq., George W. Healy, IV & Associates, Gulfport, Mississippi.

For Morgan Stanley Dean Witter, hereinafter referred to as "Respondent": Clave E. Gill, Esq., Gill, Ward & Echols, LLC, Covington, Louisiana.

CASE INFORMATION

Statement of Claim filed on or about: June 21, 2004.

Claimants signed the Uniform Submission Agreement: June 9, 2004.

Statement of Answer filed by Respondent on or about: August 30, 2004.

Respondent signed the Uniform Submission Agreement: July 21, 2004.

Pre-Hearing Brief and Incorporated Motion to Dismiss filed by Respondent on or about: February 14, 2006.

Motion in Limine filed by Claimant on or about: February 15, 2006

Response to Motion to Dismiss filed by Claimant on or about: February 23, 2006.

Response to Motion in Limine filed by Respondent on or about: February 27, 2006.

CASE SUMMARY

Claimants asserted the following causes of action: 1) fraud; 2) misrepresentations and omissions; 3) unsuitability; 4) failure to diversify; 5) breach of fiduciary duty; 6) failure to supervise; 7) aiding and abetting; 8) negligence; 9) failure to disclose; 10) violation of Rule 10b-5; 11) violation of the Louisiana Securities Law; 12) violation of the Louisiana Unfair Trade Practices Act; 13) violation of the New York General Business Law; and, 14) violation of Louisiana and New York common law. The causes of action relate to the purchase of various stocks, mutual funds and unit investment trusts including, but not limited to, Priceline.com, Ariba, MSDW Information Fund, Morgan Stanley S&P 500 and American Opportunities funds in Claimants' account.

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

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$672,000.00, pre and post-award interest, punitive damages in an amount of not less than \$500,000.00, costs and expenses, including NASD forum fees, consulting fees, attorney's fees, expert witness fees and such other relief as this Panel deemed reasonable.

Respondent requested that the Statement of Claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

On March 1, 2006, the Panel issued an Order that denied Claimants' Motion in Limine and Respondent's Motion to Dismiss.

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

AWARD

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

Respondent is found liable for unsuitability, failure to supervise and negligence and shall pay to Claimants compensatory damages in the amount of \$304,000.00, plus interest at the rate of 6.5% per annum from June 9, 2004 until date of payment.

Any and all claims for relief not specifically addressed herein, including Claimants' requests for attorney's fees and punitive damages, 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	= \$ 500.00
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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 person at the time of the events giving rise to the dispute. Accordingly, Respondent is a party to this dispute and was a member of NASD at the time the following fees were assessed:

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$ 5,000.00</u>
Total Member Fees	= \$ 8,550.00

Adjournment Fees

Request for adjournment was filed in this matter.

August 30 – September 2, 2005 – adjournment requested by Claimants = \$ 1,200.00

The Panel has assessed the total adjournment fee of \$1,200.00 jointly and severally to Claimants.

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 cancellation fees were assessed in this matter.

Injunctive Relief Fees

No injunctive relief fees were incurred during this proceeding.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. 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 a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: July 22, 2005 1 session	
(2) Pre-hearing sessions with the Panel @ \$ 1,200.00	= \$2,400.00
Pre-hearing conferences: December 8, 2004 1 session	
March 1, 2006 1 session	
Seven (7) Hearing sessions with the Panel @ \$1,200.00	= \$8,400.00
Hearing Dates: March 7, 2006 2 sessions	
March 8, 2006 2 sessions	
March 9, 2006 2 sessions	
March 10, 2006 1 session	
<hr/> Total Forum Fees	<hr/> = \$11,250.00

The Panel has assessed \$5,625.00 of the forum fees jointly and severally to Claimants.

The Panel has assessed \$5,625.00 of the forum fees to Respondent.

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 not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

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No administrative costs were incurred during this proceeding.

Fee Summary

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
Adjournment Fee	= \$ 1,200.00
Forum Fees	= \$ 5,625.00
Total Fees	= \$ 7,325.00
Less payments	= \$ 2,900.00
Balance Due NASD Dispute Resolution	= \$ 4,425.00

Respondent is solely liable for:

Member Fees	= \$ 8,550.00
Forum Fees	= \$ 5,625.00
Total Fees	= \$ 14,175.00
Less payments	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 5,625.00

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

ARBITRATION PANEL

<i>Bobby M. Harges, JD</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>W. Patrick Baker, Esq.</i>	-	<i>Public Arbitrator</i>
<i>John J. Meyer, CLU</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

/s/
Bobby M. Harges, JD
Public Arbitrator, Presiding Chairperson

03/13/06
Signature Date

/s/
W. Patrick Baker, Esq.
Public Arbitrator

03/13/06
Signature Date

/s/
John J. Meyer, CLU
Non-Public Arbitrator

03/13/06
Signature Date

03/14/06
Date of Service (For NASD Dispute Resolution office use only)

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Public Arbitrator, Presiding Chairperson
Public Arbitrator
Non-Public Arbitrator

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Bobby M. Harges
Bobby M. Harges, JD
Public Arbitrator, Presiding Chairperson

March 13, 2006
Signature Date

W. Patrick Baker, Esq.
Public Arbitrator

Signature Date

John J. Meyer, CLU
Non-Public Arbitrator

Signature Date

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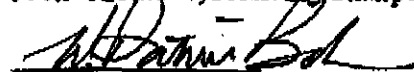
Bobby M. Harges, JD
W. Patrick Baker, Esq.
John J. Meyer, CLU

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Public Arbitrator, Presiding Chairperson
Public Arbitrator
Non-Public Arbitrator

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Bobby M. Harges, JD
Public Arbitrator, Presiding Chairperson



W. Patrick Baker, Esq.
Public Arbitrator

Signature Date

13 March 2006

Signature Date

John J. Meyer, CLU
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- Public Arbitrator
- Non-Public Arbitrator

Concurring Arbitrators' Signatures

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Public Arbitrator, Presiding Chairperson

Signature Date

W. Patrick Baker, Esq.
Public Arbitrator

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