

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimant
Neal Smith

v.

04-07313
Louisville, Kentucky

Respondents
Morgan Stanley Dean Witter, Inc., and Michael F. Brinlee

NATURE OF DISPUTE

Customer v. Member Firm and Associated Person

REPRESENTATION OF PARTIES

Neal Smith ("Claimant") was represented by Charles C. Mihalek, Esq., and Steven M. McCauley, Esq., of Charles C. Mihalek, P.S.C., Lexington, Kentucky.

Morgan Stanley Dean Witter, Inc. ("MSDW") was represented by Bradford D. Kaufman, Esq., and Jason M. Fedo, Esq., of Greenberg Traurig, LLP, West Palm Beach, Florida.

Michael F. Brinlee ("Brinlee") did not appear due to Claimant's dismissal without prejudice on November 30, 2004.

CASE INFORMATION

The Statement of Claim was filed on or about October 15, 2004. The Submission Agreement of Claimant was signed on or about October 8, 2004.

The Statement of Answer was filed by Respondent, Morgan Stanley Dean Witter, Inc., on or about December 9, 2004. The Submission Agreement of Respondent, Morgan Stanley Dean Witter, Inc., was signed on or about November 11, 2004.

Claimant filed a Motion to Dismiss Arbitration Claim Without Prejudice on or about March 1, 2005. MSDW filed a Response to Claimant's Motion to Dismiss on or about March 18, 2005. Claimant filed a Reply to MSDW's Response on or about June 9, 2005. Claimant filed a Motion to Withdraw his Motion to Dismiss on or about June 24, 2005. MSDW filed a Response in Objection to Claimant's Motion to Withdraw on or about August 17, 2005.

MSDW filed a Motion to Dismiss on or about February 28, 2006. Claimant filed a Response to MSDW's Motion to Dismiss on or about March 13, 2006. MSDW filed a Reply in Support of its Motion to Dismiss on or about March 31, 2006.

CASE SUMMARY

Claimant asserted causes of action including the following: common law conversion, common law fraud, misrepresentations and omissions, unauthorized transactions, breach of fiduciary duty, failure to supervise, breach of contract and control person liability. Claimant alleged that his registered representative, Reginald B. Smith, hereinafter referred to as "registered representative," engaged in several fraudulent actions while employed at MSDW including the following: Claimant alleged that his registered representative forged Claimant's signature on MSDW issued checks and stole those proceeds on at least 15 different occasions; Claimant alleged he gave his registered representative funds to be invested, but in fact those investments were never made; Claimant alleged that he gave specific instructions for his registered representative to transfer securities from Claimant's account to a trust account for Claimant's daughter but that his registered representative instead transferred the funds into the registered representative's own personal account without Claimant's consent or authorization; and Claimant further alleged that his registered representative forged the holdings and value of his account on MSDW's stationary to cover his fraud. Claimant asserted that all of these actions occurred while his registered representative was employed at MSDW and had MSDW properly supervised and monitored the actions of its registered representative, Claimant would not have been the victim of fraud.

MSDW denied the allegations set forth in the Statement of Claim and asserted defenses including the following: the claim failed to state a claim upon which relief can be granted; MSDW did not act with intent to defraud Claimant or with any willful disregard for Claimant; Claimant did not rely to his detriment on any act, statement or omission by MSDW; the action or inaction of Claimant, and not MSDW, caused his alleged acts, injuries and damages; Claimant's account was a non-discretionary account and MSDW had no fiduciary duty to Claimant as a matter of law; MSDW had in place adequate supervisory procedures which it reasonably and diligently implemented and followed; Claimant's claims are barred by, or should be reduced by, Claimant's own comparative fault and/or contributory negligence; and the handling of Claimant's account was in accordance with and in compliance with applicable brokerage industry standards and guidelines and all regulatory requirements.

RELIEF REQUESTED

Claimant requested an award of \$981,791 in compensatory damages, plus pre and post-judgment interest, costs, attorneys' fees, punitive damages and any other relief the panel deemed just and equitable.

MSDW requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

On or about November 30, 2004, Claimant withdrew his claims asserted against Respondent, Michael F. Brinlee, without prejudice. Accordingly, the panel did not adjudicate any claims asserted against Respondent Michael F. Brinlee.

On or about August 23, 2005, the panel granted Claimant's Motion to Withdraw his Motion to Dismiss.

On or about April 10, 2006, the panel denied MSDW's Motion to Dismiss.

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, and the evidence presented at the hearing, the undersigned arbitrators have decided the full and final resolution of the issues submitted for determination as follows:

- Respondent, Morgan Stanley Dean Witter, Inc., is in part liable to Claimant, Neal Smith, in the sum of (\$6,000.00) Six Thousand Dollars and No Cents in damages resulting from the May 10, 1991 check;
- Respondent, Morgan Stanley Dean Witter, Inc., is in part liable to Claimant, Neal Smith, in the sum of (\$7,161.60) Seven Thousand One Hundred Sixty One Dollars and Sixty Cents in pre-award interest on the above-stated sum from and including May 10, 1991 through and including April 10, 2006;
- Respondent, Morgan Stanley Dean Witter, Inc., is in part liable to Claimant, Neal Smith, in the sum of (\$7,500.00) Seven Thousand Five Hundred Dollars and No Cents in damages resulting from the August 6, 1991 check;
- Respondent, Morgan Stanley Dean Witter, Inc., is in part liable to Claimant, Neal Smith, in the sum of (\$8,808.00) Eight Thousand Eight Hundred Eight Dollars and No Cents in pre-award interest on the above-stated sum from and including August 6, 1991 through and including April 10, 2006;

- Respondent, Morgan Stanley Dean Witter, Inc., is in part liable to Claimant, Neal Smith, in the sum of (\$9,000.00) Nine Thousand Dollars and No Cents in damages resulting from the October 1, 1991 check;
- Respondent, Morgan Stanley Dean Witter, Inc., is in part liable to Claimant, Neal Smith, in the sum of (\$10,454.40) Ten Thousand Four Hundred Fifty Four Dollars and Forty Cents in pre-award interest on the above-stated sum from and including October 1, 1991 through and including April 10, 2006;
- Respondent, Morgan Stanley Dean Witter, Inc., is in part liable to Claimant, Neal Smith, in the sum of (\$7,500.00) Seven Thousand Five Dollars and No Cents in damages resulting from the October 10, 1991 check;
- Respondent, Morgan Stanley Dean Witter, Inc., is in part liable to Claimant, Neal Smith, in the sum of (\$8,700.00) Eight Thousand Seven Hundred Dollars and No Cents in pre-award interest on the above-stated sum from and including October 10, 1991 through and including April 10, 2006;
- Respondent, Morgan Stanley Dean Witter, Inc., is in part liable to Claimant, Neal Smith, in the sum of (\$14,000.00) Fourteen Thousand Dollars and No Cents in damages resulting from the June 9, 1992 check;
- Respondent, Morgan Stanley Dean Witter, Inc., is in part liable to Claimant, Neal Smith, in the sum of (\$15,500.80) Fifteen Thousand Five Hundred Dollars and Eighty Cents in pre-award interest on the above-stated sum from and including June 9, 1992 through and including April 10, 2006;
- Respondent, Morgan Stanley Dean Witter, Inc., is in part liable to Claimant, Neal Smith, in the sum of (\$20,000.00) Twenty Thousand Dollars and No Cents in damages resulting from the November 2, 1992 check;
- Respondent, Morgan Stanley Dean Witter, Inc., is in part liable to Claimant, Neal Smith, in the sum of (\$21,488.00) Twenty One Thousand Four Hundred Eighty Eight Dollars and No Cents in pre-award interest on the above-stated sum from and including November 2, 1992 through and including April 10, 2006;

The panel has also determined that Respondent, Morgan Stanley Dean Witter, Inc., shall bear 85% of the responsibility of such damages listed above and Claimant, Neal Smith, will bear the remainder. As a result of the offset, the Arbitration Panel has awarded a full and final payment of the award as follows:

1. Respondent, Morgan Stanley Dean Witter, Inc., is liable for and shall pay to Claimant, Neal Smith, compensatory damages in the sum of (\$115,695.88) One Hundred Fifteen Thousand Six Hundred Ninety Five Dollars and Eighty Eight Cents;
2. Respondent, Morgan Stanley Dean Witter, Inc., is liable for and shall pay to Claimant, Neal Smith, interest on the above-stated sum at the rate of 8% per annum from and including April 11, 2006, through and including the date this Award is paid in full;
3. 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; and
4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys' fees.

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

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:

ARBITRATION PANEL

Allan Weiss, JD - Public Arbitrator, Presiding Chair
Bernard D. Leachman, Jr., JD - Public Arbitrator
Marion Halliday Lewis, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

Allan Weiss, JD
Public Arbitrator, Presiding Chair

Signature Date

Bernard D. Leachman, Jr., JD
Public Arbitrator

Signature Date

Marion Halliday Lewis, Esq.
Non-Public Arbitrator

Signature Date

4/21/06
Date of Service (NASD use only)

One (1) Pre-hearing session with the Chairperson x \$ 450 = \$ 450

Pre-hearing conference: March 16, 2006 1 session

Four (4) Pre-hearing sessions with Panel x \$ 1,200 = \$ 4,800

Pre-hearing conferences: March 9, 2005 1 session
June 1, 2005 1 session
June 16, 2005 1 session
April 7, 2006 1 session

Four (4) Hearing sessions with Panel x \$ 1,200 = \$ 4,800

Hearing Dates: April 11, 2006 2 sessions
April 12, 2006 2 sessions

Total Forum Fees = \$ 10,050

The Arbitration Panel has assessed \$ 5,025 of the forum fees to Neal Smith.

The Arbitration Panel has assessed \$ 5,025 of the forum fees to Morgan Stanley Dean Witter, Inc.

FEE SUMMARY

Claimant, Neal Smith, is liable for:

Initial Filing Fee	= \$ 375
<u>Forum Fees</u>	= \$ 5,025
<u>Total Fees</u>	= \$ 5,400
<u>Less payments</u>	= \$ 1,575
Balance Due NASD Dispute Resolution	= \$ 3,825

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

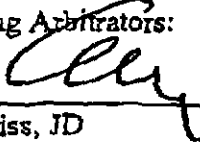
Member Fees	= \$ 7,000
<u>Forum Fees</u>	= \$ 5,025
<u>Total Fees</u>	= \$ 12,025
<u>Less payments</u>	= \$ 10,250
Balance Due NASD Dispute Resolution	= \$ 1,175

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

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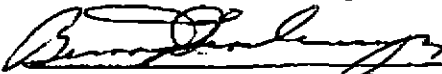
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Concurring Arbitrators:

Allan Weiss, JD
Public Arbitrator, Presiding Chair



Bernard D. Leachman, Jr., JD
Public Arbitrator

Signature Date

April 21, 2006

Signature Date

Marion Halliday Lewis, Esq.
Non-Public Arbitrator

Signature Date

4/21/06

Date of Service (NASD use only)

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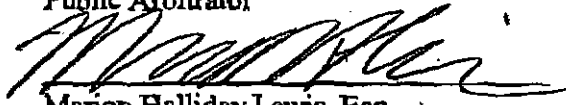
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Allan Weiss, JD
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Signature Date



Marion Halliday Lewis, Esq.
Non-Public Arbitrator

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