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

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In the Matter of the Arbitration Between:

Names of the Claimant  
Jay Gadberry

Case Number: 04-07566

Name of the Respondents  
Morgan Stanley Dean Witter, Inc.  
Dean Witter Reynolds, Inc.

Hearing Site: Little Rock, Arkansas

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Nature of the Dispute: Associated Person vs. Member.

**REPRESENTATION OF PARTIES**

For Jay Gadberry, hereinafter referred to as "Claimant": Michael R. Johns, Esq., Dover, Dixon, Horne, PLLC, Little Rock, Arkansas.

For Morgan Stanley Dean Witter, Inc. ("Morgan Stanley") and Dean Witter Reynolds, Inc. ("Dean Witter"), hereinafter collectively referred to as "Respondents": David D. Sterling, Esq., Baker Botts, L.L.P., Houston, Texas.

**CASE INFORMATION**

Statement of Claim filed on or about: October 29, 2004.

Claimant signed the Uniform Submission Agreement: October 28, 2004.

Statement of Answer filed by Respondents on or about: February 4, 2005.

Respondent Morgan Stanley signed the Uniform Submission Agreement: February 16, 2005.

Respondent Dean Witter did not submit an executed Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of employment contract; fraudulent inducement; and, false representation. The causes of action relate to Respondents' alleged failure to pay commissions due Claimant in connection with the Arkansas Teacher Retirement System ("ATRS") account.

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

### **RELIEF REQUESTED**

Claimant requested: 1) compensatory damages equal to 40% of the lost ATRS commissions on equity transactions (which equals an amount not less than \$516,000.00) and on fixed income transactions; 2) additional deferred compensation in an amount equal to 2% of the ATRS commissions; 3) additional payout on all commissions previously earned based upon a recalculation of payouts at the 39% payout rate; 4) lost future income based upon 40% of the projected amount of future ATRS commissions, 5) punitive damages in an amount to be determined by the Panel; 6) costs and expenses, including attorney's fees; and, 7) all other proper relief.

Respondents requested such relief as to which they may be entitled.

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

Respondent Dean Witter did not file with the NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code"), and having answered the claim, is bound by the determination of the Panel on all issues submitted.

Subsequent to the October 19, 2005 evidentiary hearing, the parties reached an agreement on certain issues remaining to be decided by the Panel. On or about February 3, 2006, the Panel issued an Order which directed the parties to submit simultaneous briefs on the remaining issues to be decided in this matter, by February 17, 2006.

On or about February 17, 2006, Respondents and Claimant filed simultaneous briefs on the remaining issues, both representing that while the parties had reached an agreement as to trades for which Claimant would be credited, they were unable to reach an agreement on the following issues which require the Panel's resolution:

1. Whether Claimant is entitled to \$12,000 for trades conducted in 2001;
2. Whether the payout on the transactions for which Claimant has been credited in the settlement should be 40% (as Respondent Morgan Stanley contends) or 48% (as Claimant contends);
3. Whether Claimant is entitled to attorneys' fees in connection with this proceeding, and if so, in what amount; and,
4. Whether Claimant is entitled to forum and filing fees in connection with this proceeding.

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 Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondents are jointly and severally liable for commissions due from trades conducted in 2001. Accordingly, Respondents, jointly and severally, shall pay to Claimant compensatory damages in the sum of \$12,000.00.

The Panel finds that the payout on the transactions for which Claimant received credit pursuant to the settlement reached between the parties credit shall be figured at 40%.

Claimant is entitled to no pre-judgment interest.

Respondents are jointly and severally liable and shall pay to Claimant attorneys' fees in the amount of \$25,626.75.

Respondents are jointly and severally liable and shall pay to Claimant \$375.00 representing reimbursement of the initial claim filing fee previously paid by Claimant to NASD Dispute Resolution.

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 = \$ 375.00

#### **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 events giving rise to the dispute. Accordingly, Respondents Morgan Stanley and Dean Witter are parties and member firms.

Member surcharge	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$4,000.00
Total Member Fees	= \$7,000.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

August 15-17, 2005, adjournment requested by all parties = \$1,200.00

January 10, 2006, adjournment requested by all parties = \$1,500.00

The Panel has assessed \$750.00 of the Adjournment Fees to Claimant.

The Panel has assessed \$750.00 of the Adjournment Fees jointly and severally to Respondents.

The Panel waived \$1,200.00 of the Adjournment Fees.

**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:

January 10, 2006, hearing, adjournment requested on January 6, 2006.

The Panel has assessed \$150.00 of the three-day cancellation fees to Claimant.

The Panel has assessed \$150.00 of the three-day cancellation fees jointly and severally to Respondents.

**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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Five (5) Pre-hearing sessions with the Panel @ \$1,200.00/session = \$6,000.00

Pre-hearing conferences:	March 10, 2005	1 session
	August 23, 2005	1 session
	October 28, 2005	1 session
	January 23, 2006	1 session
	February 2, 2006	1 session

Four (4) Hearing sessions @ \$1,200.00/session		= \$4,800.00
Hearing Date(s):	October 18, 2005	2 sessions
	October 19, 2005	2 sessions

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Total Forum Fees	= \$10,800.00
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The Panel waived \$1,200.00 of the forum fees.

The Panel has assessed the total remaining forum fees of \$9,600.00 to Respondents, jointly and severally.

**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**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
Adjournment Fees	= \$ 750.00
<u>Three-Day Cancellation Fees</u>	= \$ 150.00
Total Fees	= \$1,275.00
<u>Less payments</u>	= \$1,275.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Morgan Stanley is solely liable for:

<u>Member Fees</u>	= \$7,000.00
Total Fees	= \$7,000.00
<u>Less payments</u>	= \$7,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

Forum Fees	= \$ 9,600.00
Adjournment Fees	= \$ 750.00
<u>Three-Day Cancellation Fees</u>	<u>= \$ 150.00</u>
Total Fees	= \$10,500.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$10,500.00

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

**ARBITRATION PANEL**

David Byron Bogard	-	Public Arbitrator, Presiding Chairperson
Frances S. Fendler, J.D.	-	Public Arbitrator
Patrice L. Stewart	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
David Byron Bogard  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Frances S. Fendler, J.D.  
Public Arbitrator

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

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Patrice L. Stewart  
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\_\_\_\_\_  
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\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution  
Arbitration No. 04-07566  
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Public Arbitrator, Presiding Chairperson

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