

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

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In the Matter of the Arbitration Between:

Lona and Jimmy Brown (Claimants) v Morgan Stanley Dean Witter, Inc. (Respondent)

Case Number: 05-00690

Hearing Site: Cleveland, Ohio

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

**REPRESENTATION OF PARTIES**

Claimants Lona and Jimmy Brown ("J. Brown"), hereinafter collectively referred to as "Claimants": Celeste M. Chiaramonte, Esq., Woska & Hayes, LLP, Kingwood, TX.

Respondent Morgan Stanley Dean Witter, Inc., ("Morgan") hereinafter referred to as "Respondent": Michael A. Gross, Esq., Ulmer Berne, LLP, Cleveland, OH.

**CASE INFORMATION**

Statement of Claim filed on or about: February 4, 2004.

Claimant L. Brown signed the Uniform Submission Agreement.

Claimant J. Brown signed the Uniform Submission Agreement.

Reply to Respondent's Motion to Dismiss filed on or about: April 5, 2005.

Statement of Answer and Motion to Dismiss filed by Respondent on or about: March 31, 2005.

Respondent signed the Uniform Submission Agreement: February 18, 2005.

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of fiduciary duty, violation of know your customer rule, failure to supervise, violations of the securities laws, negligence, misrepresentations, breach of contract, failure to diversify, suitability, and failure to hedge. The causes of action relate to margin calls, internet stock, proprietary mutual funds, variable annuities, and technology stock, including Excite Inc., Cisco Systems, America Online, DWVA; Emerging Growth, European Growth, International Magnum and Pacific Growth.

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 \$100,000.00; punitive damages; pre-judgment interest; all charges to the accounts; post judgment interest; lost earnings, costs, forum fees, attorneys' fees, and all other and further relief to which they may be entitled too.

Respondent requested that the Panel dismiss the claims asserted against it and award any other relief that the Panel deems proper.

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

At the June 24, 2005 pre-hearing conference call, the Panel heard oral arguments on Respondent's Motion to Dismiss. After due deliberation, the Panel granted said motion.

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.

### **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:

1. Claimants' claims in their entirety are dismissed without prejudice.
2. 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	= \$ 225.00
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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, Morgan is a party.

Member surcharge	= \$ 1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 1,700.00

#### **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:

Two (2) Pre-hearing sessions with Panel @ \$750.00		= \$ 1,500.00
Pre-hearing conferences:	June 20, 2005	1 session
	June 24, 2005	1 session
Total Forum Fees		= \$ 1,500.00

1. The Panel has assessed \$ 750.00 of the forum fees jointly and severally to Claimants.
2. The Panel has assessed \$ 750.00 of the forum fees to Respondent.

#### **Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$ 750.00
Total Fees	= \$ 975.00
Less payments	= \$ 1,425.00
Refund due Claimants	= \$ 450.00

2. Respondent Morgan is solely liable for:

Member Fees	= \$ 3,550.00
Forum Fees	= \$ 750.00
Total Fees	= \$ 4,300.00
Less payments	= \$ 1,850.00
Balance Due NASD Dispute Resolution	= \$ 2,450.00

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

**ARBITRATION PANEL**

Michael L. King	-	Public Arbitrator, Presiding Chairperson
James Dale Ellis	-	Public Arbitrator
Robert Shiffra	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

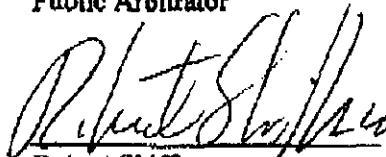
I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

\_\_\_\_\_  
Michael L. King  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
James Dale Ellis  
Public Arbitrator

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

  
\_\_\_\_\_  
Robert Shiffra  
Non-Public Arbitrator

7-25-05  
\_\_\_\_\_  
Signature Date

July 26, 2005  
\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

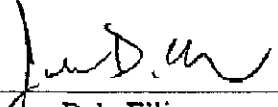
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James Dale Ellis	-	Public Arbitrator
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Public Arbitrator, Presiding Chairperson

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

  
\_\_\_\_\_  
James Dale Ellis  
Public Arbitrator

7/25/05.  
\_\_\_\_\_  
Signature Date

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Non-Public Arbitrator

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Michael L. King	-	Public Arbitrator, Presiding Chairperson
James Dale Ellis	-	Public Arbitrator
Robert Shiffra	-	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.

Michael L. King  
Michael L. King  
Public Arbitrator, Presiding Chairperson

July 25, 2005  
Signature Date

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James Dale Ellis  
Public Arbitrator

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

\_\_\_\_\_  
Robert Shiffra  
Non-Public Arbitrator

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