
Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

James B. Graybill

Case Number: 05-01095

Names of the Respondents

Morgan Stanley Dean Witter

Wilbur Ray Powell

Gregory Ray Powell

Hearing Site: Atlanta, Georgia

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

REPRESENTATION OF PARTIES

For James B. Graybill, hereinafter referred to as "Claimant": Pat Huddleston, II, Esq., Huddleston & Nohr, Marietta, Georgia.

For Morgan Stanley Dean Witter ("MSDW"), Wilbur Ray Powell ("W. Powell") and Gregory Ray Powell ("G. Powell"), hereinafter referred to as "Respondents": Peter S. Fruin, Esq. and Kathryn Roe Eldridge, Esq., Maynard, Cooper & Gale, P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: March 2, 2005.

Claimant signed the Uniform Submission Agreement: February 23, 2005.

Statement of Answer filed by Respondents on or about: May 17, 2005.

Respondent G. Powell signed the Uniform Submission Agreement: March 24, 2005.

Respondent W. Powell signed the Uniform Submission Agreement: April 19, 2005.

Respondent MSDW signed the Uniform Submission Agreement: March 30, 2005.

CASE SUMMARY

Claimant asserted the following causes of action: 1) breach of fiduciary duty; 2) unsuitability; 3) failure to supervise; 4) fraud; 5) negligence; 6) breach of contract; 7) negligent misrepresentation and omissions; and, 8) respondeat superior. The causes of action relate to the purchase of various mutual funds including, but not limited to, MSDW Small Cap Growth Fund B, MSDW Information Fund B, MSDW Developing Growth Fund B, Van Kampen Aggressive Growth Fund and the Van Campen Comstock Fund, for Claimant's accounts.

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

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$100,000.00, lost opportunity damages, interest, attorneys' fees, tax losses and punitive damages.

Respondents requested that the Statement of Claim be dismissed in its entirety, that all costs and forum fees be assessed against Claimant, plus an award of such other, further and different relief as this Panel deemed appropriate. In addition, Respondents requested that the Panel enter an order expunging this matter from the NASD Central Registration Depository (the "CRD") records of Respondents W. Powell and G. Powell.

OTHER ISSUES CONSIDERED AND DECIDED

On or about March 15, 2006, the parties notified NASD Dispute Resolution that they had settled this matter and would be submitting a proposed Stipulated Award with a request for expungement of the NASD CRD records of Respondent G. Powell. Claimant and Respondents entered into a confidential settlement agreement. In connection with that agreement, Claimant dismissed all claims against Respondents, with prejudice.

On or about April 6, 2006, the parties submitted a Joint Motion for Expungement of the NASD CRD record of Respondent G. Powell and a proposed Stipulated Award. The parties stated that Respondent G. Powell did not act as Claimant's financial advisor and committed no wrongdoing with respect to Claimant's accounts. He therefore was not involved in the alleged investment-related sales practice violation and the claim is due to be expunged from his records.

Claimant has entered into a settlement whereby Respondent MSDW will reimburse him for a portion of his account losses, however, Respondent G. Powell will not contribute toward the settlement.

Pursuant to NASD 99-09, this Panel has the authority to order the expungement of this proceeding from Respondent G. Powell's registration record. Under current procedure, Respondent G. Powell will then file a petition in court in order to obtain an Order sufficient for the NASD's purposes. However, an Order from this Panel is a prerequisite to the court action.

In April 2004, the NASD adopted Rule 2130, which sets forth additional expungement standards (including a requirement that the arbitrators make an affirmative finding of fact) for arbitrations or civil lawsuits filed after April 12, 2004. An award recommending expungement would be proper under the standards set forth in Rule 2130(b)(1)(B) because Respondent G. Powell "was not involved in the alleged investment-related sales practice violation."

Respondent G. Powell worked on a team with his father R. Powell while at MSDW. However, R. Powell serviced the Claimant's accounts; G. Powell did not have any interaction with the Claimant. Thus, G. Powell was not involved in the transactions at issue. As Claimant will agree, through the process of discovery, it became clear that G. Powell was improperly named as a Respondent in this matter.

Wherefore, Respondent G. Powell requests an order expunging this complaint from his NASD CRD record and Claimant, through his counsel, hereby joins in this request.

On April 18, 2006, the Panel issued an Order that granted the Joint Motion for Expungement of the NASD CRD record of Respondent G. Powell.

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

AWARD

After considering the pleadings, the Joint Motion for Expungement and the proposed Stipulated Award, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimant's claims are hereby denied and dismissed, with prejudice.

Pursuant to Rule 2130, the Panel finds that Respondent G. Powell was improperly named in the Statement of Claim and had no involvement in the alleged investment-related sales practice violations. Therefore, the Panel recommends the expungement of all reference to the above captioned arbitration from Respondent G. Powell's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent G. Powell must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Each party shall bear its own costs and expenses associated with the above-referenced arbitration, including attorneys' fees, except as fees are specifically addressed below.

Any and all claims for relief not specifically addressed herein, including Claimant's request for 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 = \$ 225.00

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, MSDW is a party to this dispute and was a member of NASD at the time the following fees were assessed:

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

Hearing process fee	= \$1,700.00
Total Member Fees	= \$3,550.00

Adjournment Fees

No requests for adjournments were filed 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 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 the Panel @ \$750.00	= \$750.00
Pre-hearing conference: July 21, 2005	
Total Forum Fees	= \$750.00

The Panel has assessed \$375.00 of the forum fees to Claimant.

The Panel has assessed \$375.00 of the forum fees jointly and severally to Respondents.

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.

No administrative costs were incurred during this proceeding.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$ 375.00
Total Fees	= \$ 600.00
Less payments	= \$ 600.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent MSDW is solely liable for:

<u>Member Fees</u>	= \$ 3,550.00
<u>Total Fees</u>	= \$ 3,550.00
<u>Less payments</u>	= \$ 3,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 375.00
<u>Total Fees</u>	= \$ 375.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 375.00

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

ARBITRATION PANEL

<i>Constance K. Barron</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Irving M. Shlesinger</i>	-	<i>Public Arbitrator</i>
<i>David T. Maddux</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

/s/
Constance K. Barron
Public Arbitrator, Presiding Chairperson

04/18/06
Signature Date

/s/
Irving M. Shlesinger
Public Arbitrator

04/18/06
Signature Date

/s/
David T. Maddux
Non-Public Arbitrator

04/21/06
Signature Date

04/21/06
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution

Arbitration No.05-01095

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Constance K. Barron

Public Arbitrator, Presiding Chairperson

4-18-06

Signature Date

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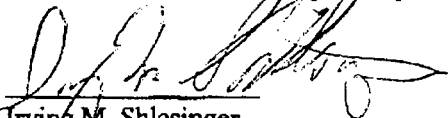
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Public Arbitrator, Presiding Chairperson



Irving M. Shlesinger
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4/18/06

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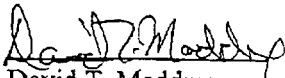
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Public Arbitrator, Presiding Chairperson

Signature Date

Irving M. Shlesinger
Public Arbitrator

Signature Date



David T. Maddux
Non-Public Arbitrator

4/21/06

Signature Date

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