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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Estate of Michael P. Warren, by and through,  
Executrix Patricia Cahill

Case Number: 05-03135

Name of the Respondent  
Morgan Stanley & Co., Inc.

Hearing Site: Boca Raton, Florida

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

For Estate of Michael P. Warren, by and through Executrix Patricia Cahill, hereinafter referred to as "Claimant": Richard F. Stephens, Esq., Boca Raton, Florida.

For Respondent Morgan Stanley & Co., Inc. ("MSCI"): Tucker H. Byrd, Esq., Greenberg Traurig, P.A., Orlando, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: June 17, 2005.

Claimant signed the Uniform Submission Agreement: May 25, 2005.

Statement of Answer filed by Respondent MSCI on or about: August 11, 2005.

Respondent MSCI signed the Uniform Submission Agreement: August 10, 2005.

Reply to MSCI's Statement of Answer filed by Claimant on or about: August 22, 2005.

Motion to Compel and for Sanctions filed by Claimant on or about: December 1, 2005.

Response to Claimant's Motion to Compel and for Sanctions filed by Respondent MSCI on or about: December 16, 2005.

Supplemental Reply in Support of Motion to Compel and for Sanctions filed by Claimant on or about: December 21, 2005.

### **CASE SUMMARY**

Claimant alleged the following causes of action in the Statement of Claim: 1) churning; 2) unauthorized trading; 3) breach of contract; 4) breach of implied covenant of good faith and fair dealing; 5) negligent supervision; 6) breach of fiduciary duty; 7) fraud; 8) violations of unspecified NASD and New York Stock Exchange Rules; and 9) violations of unspecified federal and state securities laws. The causes of action relate to purchases and sales of various equities within Claimant's accounts, including Microsoft, Sycamore Networks, EMC, and QQQ.

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

### **RELIEF REQUESTED**

Claimant requested: 1) compensatory damages in an amount up to \$2,000,000.00; 2) punitive damages in the amount of \$6,000,000.00; 3) pre-judgment interest at the highest legal rate; 4) costs of this proceeding, including filing fees, hearing session fees and expert witness fees; and 5) such further relief as the undersigned arbitrators (the "Panel") deemed just and appropriate.

Respondent MSCI requested that the Panel: 1) dismiss all claims asserted in the Statement of Claim in their entirety; 2) award MSCI its costs and expenses incurred in the defense of this claim; and 3) award MSCI such other further relief as deemed just and proper.

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

On or about January 12, 2006, the Panel entered an Order confirming Claimant's withdrawal of its Motion for Sanctions during the pre-hearing conference held on January 11, 2006.

At the evidentiary hearing, Claimant made an oral motion for the Panel to allow all evidence presented during the hearing to stand on its own and to be evaluated by the Panel. Respondent MSCI objected to Claimant's motion. Thereafter, the Panel granted Claimant's motion to accept all evidence presented during the hearing but ruled that Claimant's additional causes of action were not accepted.

The parties 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, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondent MSCI is liable for actual fraud (form alteration), failure to supervise (NASD Conduct Rule 3010), breach of contract, breach of implied covenant of good faith and fair dealing, and shall pay to Claimant compensatory damages in the amount of \$1,500,000.00. The Panel finds liability against Respondent MSCI, which acted with reckless disregard of Claimant's rights (Qualis Care LP v. Hall) and that fraud has been

committed which is gross or wanton and involves acts or omissions, including failure to supervise, evidencing callous disregard and indifference to the rights of Claimant (Aldrich v. Thomson McKinnon, 756 F.2d 243, 245 (2d Cir. 1985)).

The Panel finds that Respondent MSCI is liable and shall pay to Claimant punitive damages in the amount of \$3,500,000.00, pursuant to Qualis Care LP v. Hall, Aldrich v. Thomson McKinnon Sec., and Mastrobuono v. Shearson Lehman Hutton, et al, 514 U.S. 52.

The Panel finds no liability on Claimant's claims for unauthorized trading and churning.

Respondent MSCI is liable and shall pay to Claimant the sum of \$600.00 representing reimbursement of the claim filing fee previously paid by Claimant to NASD Dispute Resolution.

Respondent MSCI is liable and shall pay to Claimant her expert witness fees in the amount of \$28,800.00.

Any and all claims for relief not specifically addressed herein are denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 600.00
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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 MSCI is a party and a member firm.

Member surcharge	= \$3,350.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,500.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were assessed during these proceedings.

#### **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 three-day cancellation fees were assessed during these proceedings.

**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.

There were no injunctive relief fees assessed during these proceedings.

**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 per session = \$ 450.00  
Pre-hearing conference: April 13, 2006

Two (2) Pre-hearing sessions with the Panel @ \$1,200.00 per session = \$ 2,400.00  
Pre-hearing conferences: October 20, 2005 1 session  
January 11, 2006 1 session

Fifteen (15) Hearing Sessions @ \$1,200.00 per session = \$18,000.00  
Hearing sessions: April 19, 2006 2 sessions  
April 20, 2006 2 sessions  
April 21, 2006 2 sessions  
April 24, 2006 2 sessions  
April 25, 2006 2 sessions  
April 26, 2006 3 sessions  
April 27, 2006 2 sessions

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Total Forum Fees = \$20,850.00

The Panel has assessed the total forum fees of \$20,850.00 to Respondent MSCl.

**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.

There were no administrative costs incurred during these proceedings.

**Fee Summary**

Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 600.00
Total Fees	= \$ 600.00

<u>Less payments</u>	= \$ 600.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent MSCI is solely liable for:

Member Fees	= \$ 9,600.00
<u>Forum Fees</u>	= \$ 20,850.00
Total Fees	= \$ 30,450.00
<u>Less payments</u>	= \$ 9,600.00
Balance Due NASD Dispute Resolution	= \$ 20,850.00

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

**ARBITRATION PANEL**

Lawrence C. Levey	-	Public Arbitrator, Presiding Chairperson
Peter A. Korn	-	Public Arbitrator
Richard H. Tierney	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
Lawrence C. Levey  
Public Arbitrator, Presiding Chairperson

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

/s/  
Peter A. Korn  
Public Arbitrator

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

/s/  
Richard H. Tierney  
Non-Public Arbitrator

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

May 3, 2006  
Date of Service (For NASD Dispute Resolution office use only)

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 Arbitration No. 05-03135  
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<u>Less payments</u>	= \$ 600.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent MSCI is solely liable for:

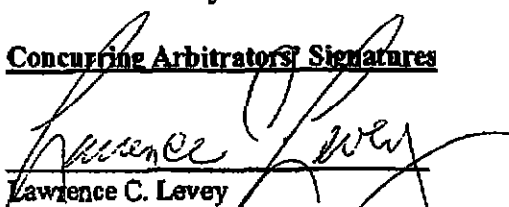
Member Fees	= \$ 9,600.00
Forum Fees	= \$ 20,850.00
Total Fees	= \$ 30,450.00
Less payments	= \$ 9,600.00
Balance Due NASD Dispute Resolution	= \$ 20,850.00

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

**ARBITRATION PANEL**

Lawrence C. Levey	-	Public Arbitrator, Presiding Chairperson
Peter A. Korn	-	Public Arbitrator
Richard H. Tierney	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
 Lawrence C. Levey  
 Public Arbitrator, Presiding Chairperson

05-02-06  
 Signature Date

\_\_\_\_\_  
 Peter A. Korn  
 Public Arbitrator

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

\_\_\_\_\_  
 Richard H. Tierney  
 Non-Public Arbitrator

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

\_\_\_\_\_  
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## NASD Dispute Resolution

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Balance Due NASD Dispute Resolution

\$ 0.00

Respondent MSCT is solely liable for:

Member Fees

= \$ 9,600.00

Forum Fees

= \$ 20,850.00

Total Fees

= \$ 30,450.00

Less payments

= \$ 3,600.00

Balance Due NASD Dispute Resolution

= \$ 26,850.00

These fees are payable to NASD Dispute Resolution and are due at once upon receipt of this award. See Rule 10340 of the Code.

## ARBITRATION PANEL

Lawrence C. Levey

Public Arbitrator, Presiding Chairperson

Peter A. Korn

Public Arbitrator

Richard H. Tierney

Non-Public Arbitrator

## Consent of Arbitrators' Signatures

Lawrence C. Levey

Signature Date

Public Arbitrator, Presiding Chairperson



5-2-06

Peter A. Korn

Signature Date

Public Arbitrator

Richard H. Tierney

Signature Date

Non-Public Arbitrator

Date of Service (For NASD Dispute Resolution notice use only)

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<u>Less payments</u>	= \$ 600.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent MSCI is solely liable for:

Member Fees	= \$ 9,600.00
Forum Fees	= \$ 20,850.00
Total Fees	= \$ 30,450.00
<u>Less payments</u>	= \$ 9,600.00
Balance Due NASD Dispute Resolution	= \$ 20,850.00

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

**ARBITRATION PANEL**

Lawrence C. Levey	-	Public Arbitrator, Presiding Chairperson
Peter A. Korn	-	Public Arbitrator
Richard H. Tierney	-	Non-Public Arbitrator

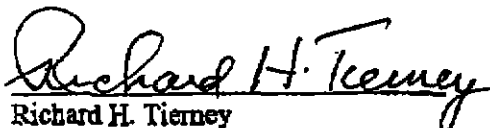
**Concurring Arbitrators' Signatures**

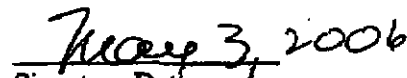
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Lawrence C. Levey  
Public Arbitrator, Presiding Chairperson

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Signature Date

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Peter A. Korn  
Public Arbitrator

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Signature Date

  
Richard H. Tierney  
Non-Public Arbitrator

  
Signature Date

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