

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

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In the Matter of the Arbitration Between:

Barbara Anderson Little, IRA (Claimant) vs. Michael Bell and Morgan Stanley Dean Witter, Inc. (Respondents)

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Case Number: 05-03145

Hearing Site: Buffalo, New York

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

**REPRESENTATION OF PARTIES**

Claimant Barbara Anderson Little, IRA hereinafter referred to as "Claimant": David Liebrader, Esq., The Law Office of David Liebrader, Inc., Las Vegas, NV.

Respondents Michael Bell ("Bell") and Morgan Stanley Dean Witter, Inc. ("MSDW") hereinafter collectively referred to as "Respondents": Michael Manning, Esq., and Kathryn Gostinger, Esq., Greenberg Traurig, LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: June 7, 2005.  
Claimant signed the Uniform Submission Agreement.

Statement of Answer filed by Respondents on or about: November 23, 2005.  
Bell signed the Uniform Submission Agreement: December 1, 2005.  
MSDW signed the Uniform Submission Agreement: November 21, 2005.

**CASE SUMMARY**

Claimant asserted the following causes of action: control person liability, breach of fiduciary duty, negligence, and breach of implied warranty of good faith and fair dealing. The causes of action relate to a series of MSDW "B" share mutual funds.

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 an amount not less than \$360,000.00, punitive and exemplary damages, pre-award and post-award interest, costs, expenses, attorneys' fees, and expert witness fees.

Respondents requested dismissal of the Statement of Claim in its entirety, costs, attorneys' fees, expungement of this matter from Bell's CRD records, and such other

and further relief as the Panel deems just and proper.

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

During the hearing Respondents orally Moved to Dismiss Claimant's Statement of Claim. The Panel heard all arguments on the motion. After due deliberation, the Panel denied Respondents' Motion to Dismiss.

During the hearing Claimant amended her relief requested to compensatory damages in the amount of \$202,807.00.

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. Respondents are jointly and severally liable for and shall pay to Claimant compensatory damages in the amount of \$40,000.00 plus interest at the rate of 9% per annum beginning from July 1, 2006 until the Award is paid in full.
2. Each party shall bear its own costs.
3. Respondent Bell's request for expungement is denied.
4. 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	= \$ 300.00
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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 Stanley Dean Witter, Inc. is a party.

Member Surcharge	= \$ 1,700.00
Pre-hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 2,750.00

#### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. 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) Decisions on discovery-related motions on the papers  
with (1) one arbitrator @ \$200.00 = \$ 400.00  
Respondents submitted one discovery-related motion  
Claimant submitted one discovery-related motion

One (1) Decision on discovery-related motions on the papers  
with (3) three arbitrators @ \$600.00 = \$ 600.00  
Respondents submitted one discovery-related motion

One (1) Pre-hearing session with Panel @ \$1,125.00/ session = \$ 1,125.00  
Pre-hearing conference: January 12, 2006 1 session

Six (6) Hearing sessions with Panel @ \$1,125.00/ session = \$ 6,750.00  
Hearing Dates: September 12, 2006 2 sessions  
September 13, 2006 2 sessions  
September 14, 2006 2 sessions

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Total Forum Fees = \$ 8,875.00

1. The Panel has assessed \$4,437.50 of the forum fees to Claimant.
2. The Panel has assessed \$4,437.50 of the forum fees to Respondents, jointly and severally.

### Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 4,437.50
Total Fees	= \$ 4,737.50
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 4,737.50

2. Respondent MSDW is solely liable for:

Member Fees	= \$ 5,200.00
Total Fees	= \$ 5,200.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally liable for:

Forum Fees	= \$ 4,437.50
Total Fees	= \$ 4,437.50
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 4,437.50


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

ARBITRATION PANEL

Karin A. Schlosser, Esq.	-	Public Arbitrator, Presiding Chairperson
Daniel M. Mankowski	-	Public Arbitrator
Richard A. Scalfani	-	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.

  
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Karin A. Schlösser, Esq.  
Public Arbitrator, Presiding Chairperson

09/19/06  
\_\_\_\_\_  
Signature Date

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Daniel M. Mankowski  
Public Arbitrator

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

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Richard A. Scalfani  
Non-Public Arbitrator

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

September 21, 2006  
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Date of Service (For NASD Dispute Resolution use only)

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