

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Names of Claimants

Gary Wetherhold
Pamela "P.J." Wetherhold

Case No. 99-00802

Name of Respondent

Morgan Stanley Dean Witter, Inc.

REPRESENTATION OF PARTIES

For Gary Wetherhold and Pamela "P.J." Wetherhold, hereinafter collectively referred to as "Claimants": Joel Settembrini, Esq. and Jon L. Swergold, Esq. of Smith Hulsey & Busey, Jacksonville, Florida.

For Morgan Stanley Dean Witter, Inc. ("Dean Witter"), hereinafter referred to as "Respondent": Joseph C. Coates, III, Esq., Bradford D. Kaufman, Esq. and Jon A. Jacobson, Esq. of Greenberg Traurig, West Palm Beach, Florida.

CASE INFORMATION

Statement of Claim filed on or about: February 22, 1999.
Claimants signed the Uniform Submission Agreement: February 22, 1999.
Statement of Answer filed by Respondent on or about: April 21, 1999.
Respondent signed the Uniform Submission Agreement: July 6, 1999.

CASE SUMMARY

Claimants asserted the following: In October 1997, Respondent promised the Claimants specified compensation if the Claimants assisted Respondent through the end of 1997 in (i) resolving the claims of certain clients whose accounts had been frozen; and, (ii) transferring the Claimants' clients to other Dean Witter account executives. Claimants further contended that if the panel concluded that Respondent's promise was not enforceable, Respondent is liable to Claimants for fraud. In addition, Claimants contended that Respondent tortiously interfered with the relationships between the Claimants and certain of their clients.

Respondent denied the allegations contained in the Statement of Claim and maintained the following: Respondent never entered into a contract to pay Claimants a special compensation

package. To the contrary, as part of the terms of their employment, Claimants agreed to be bound by Respondent's written policies and procedures, which policies and procedures dealt comprehensively with the issue of employee compensation. Respondent maintained that Claimants had received all of the compensation benefits they were entitled to under Respondent's policies and procedures. Respondent further maintained it could not have entered into a contract to pay Claimants the alleged special compensation package because its terms, as alleged by Claimants, would have violated Respondent's policies and procedures. Finally, Respondent asserted that it never made disparaging comments about Claimants nor did it ever refuse, in bad faith, to promptly process orders placed by Claimants.

RELIEF REQUESTED

Claimants requested an award of compensatory damages in the sum of \$783,090.86 and punitive damages in the sum of \$500,000.00 to \$1,000,000.00.

Respondent requested that the Statement of Claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

At the conclusion of Claimants' case, Claimants moved to include promissory estoppel as an additional ground upon which relief should be granted. The Panel allowed the Motion for the pleadings to conform to the proof.

At the conclusion of Claimants' case, Respondent moved to dismiss Claimants' claims in their entirety. The Panel denied Respondent's 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, 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 is liable and shall pay to Claimants the sum of \$352,021.54, which sum includes pre-judgment interest of \$87,542.54. Post-judgment interest shall accrue at the rate of 10% per annum from December 15, 2000, until the date of payment of the Award.

Claimants' request for punitive damages is denied.

All other requests for relief not specifically addressed herein are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$500.00

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 event(s) giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge = \$2,500.00
Pre-hearing process fee = \$600.00
Hearing process fee = \$4,500.00

Adjournment Fees

There were no adjournments requested during these proceedings.

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

| | |
|--|-------------------|
| Two Pre-hearing sessions with a single arbitrator x \$300.00 | = \$600.00 |
| Pre-hearing conferences: February 11, 2000 | 1 session |
| March 3, 2000 | 1 session |
| One Pre-hearing session with Panel x \$1,000.00 | = \$1,000.00 |
| Pre-hearing conference: September 21, 1999 | 1 session |
| Four Hearing sessions x \$1,000.00 | = \$4,000.00 |
| Hearing Dates: November 15, 2000 | 2 sessions |
| November 16, 2000 | <u>2 sessions</u> |
| Total Forum Fees | = \$5,600.00 |

The Panel has assessed \$2,800.00 of the forum fees to Claimants, jointly and severally.
The Panel has assessed \$2,800.00 of the forum fees to Respondent.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives,

interpreters, and security.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimants be and hereby are jointly and severally liable for:

| | |
|---|---------------------|
| Initial Filing Fee | = \$500.00 |
| Forum Fees | = \$2,800.00 |
| Total Fees | = \$3,300.00 |
| <u>Less payments</u> | <u>= \$1,500.00</u> |
| Balance Due NASD Dispute Resolution, Inc. | = \$1,800.00 |

Respondent be and hereby is solely liable for:

| | |
|---|---------------------|
| Member Fees | = \$7,600.00 |
| Forum Fees | = \$2,800.00 |
| Total Fees | = \$10,400.00 |
| <u>Less payments</u> | <u>= \$7,600.00</u> |
| Balance Due NASD Dispute Resolution, Inc. | = \$2,800.00 |

All balances are due and payable to NASD Dispute Resolution, Inc. immediately upon receipt of the Award by the parties.

Concurring Arbitrators' Signatures

_____/s/_____
R. Donald Kelly, LLB
Public Arbitrator, Presiding Chair

Signature Date

_____/s/_____
Daniel J. Costello, Ph.D
Public Arbitrator

Signature Date

_____/s/_____
Deborah J. Powell
Industry Arbitrator

Signature Date

December 11, 2000

Date of Service (For NASD-DR office use only)

interpreters, and security.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimants be and hereby are jointly and severally liable for:

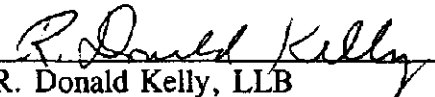
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R. Donald Kelly, LLB
Public Arbitrator, Presiding Chair

Nov 29 2000

Signature Date

Daniel J. Costello, Ph.D
Public Arbitrator

Signature Date

Deborah J. Powell
Industry Arbitrator

Signature Date

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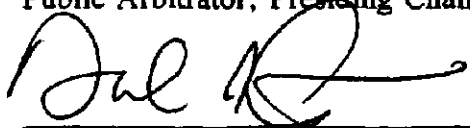
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R. Donald Kelly, LLB
Public Arbitrator, Presiding Chair



Daniel J. Costello, Ph.D
Public Arbitrator

Signature Date

11/29/00

Signature Date

Deborah J. Powell
Industry Arbitrator

Signature Date

Date of Service (For NASD-DR office use only)

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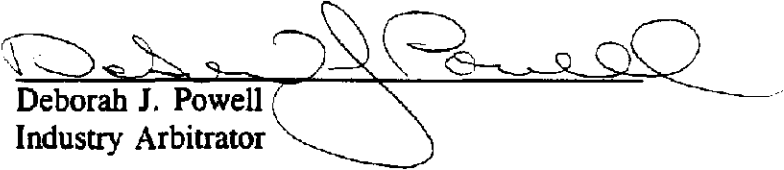
Concurring Arbitrators' Signatures

R. Donald Kelly, LLB
Public Arbitrator, Presiding Chair

Signature Date

Daniel J. Costello, Ph.D
Public Arbitrator

Signature Date



Deborah J. Powell
Industry Arbitrator

12/2/00

Signature Date

Date of Service (For NASD-DR office use only)