

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

**Margaret M. Johnson (Individually and as Co-Trustee for the Margaret M. Johnson Revocable Living Trust) and Pamela M. Davis, Co-Trustee for the Margaret M. Johnson Revocable Living Trust**

**v.**

**Morgan Stanley Dean Witter, Inc., Lois Budman and Mary Lou Labe**

Case Number: 99-3035

Hearing Site: Southfield, Michigan

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**REPRESENTATION OF PARTIES**

Claimants, Margaret M. Johnson (Individually and as Co-Trustee for the Margaret M. Johnson Revocable Living Trust) ("Johnson"), and Pamela M. Davis, Co-Trustee for the Margaret M. Johnson Revocable Living Trust ("Davis") hereinafter referred to as "Claimants": David M. Foster, Esq., Farmington Hills, Michigan.

Respondents, Morgan Stanley Dean Witter, Inc., ("MSDW") Lois Budman ("Budman") and Mary Lou Labe ("Labe"), hereinafter collectively referred to as "Respondents": Anne Tennant Cooney, Esq., Morgan Stanley Dean Witter, San Francisco, California.

**CASE INFORMATION**

Statement of Claim including Revocable Living Trust Agreement filed on or about: June 30, 1999

Claimant, Margaret M. Johnson, signed the Uniform Submission Agreement: June 30, 1999

Claimant, Margaret M. Johnson Revocable Living Trust, signed the Uniform Submission Agreement: June 30, 1999, by Margaret M. Johnson, Co-Trustee

Claimant, Margaret M. Johnson Revocable Living Trust, signed the Uniform Submission Agreement: June 30, 1999, by Pamela M. Davis, Co-Trustee

Statement of Answer filed by Respondents on or about: September 10, 1999

Respondent Budman signed the Uniform Submission Agreement: September 29, 1999

Respondent Labe, signed the Uniform Submission Agreement: September 19, 1999

Respondent Dean Witter Reynolds, Inc., signed the Uniform Submission Agreement: September 23, 1999, by Anne Tennant Cooney

**CASE SUMMARY**

Claimant alleged that while she was hospitalized, Respondents caused to have sold \$463,000.00 worth of blue chip stocks such as Chase Manhattan Bank and Warner Lambert. Claimant further alleged that two days after she was discharged from the hospital, Respondents caused to have sold \$124,000.00 worth of Allegheny Energy. Claimant asserted that Respondent replaced the Allegheny Energy with the purchase of \$124,000.00 worth of a Fund that primarily invests in below investment grade bonds.

Claimant stated that Respondent also sold an additional \$153,000.00 of securities (Warner Lambert) and replaced this stock with a medical and real estate investment trust and a proprietary fund of Morgan Stanley, all far riskier and volatile than what was sold. Claimants asserted that the underlying theory of these transactions was to eliminate a margin balance.

Claimants asserted the following causes of action: Breach of fiduciary duty by Respondents' for failing to conduct their dealings with Claimants in a manner consistent with just and equitable principles of the trade; Breach of fiduciary duty by Respondents for creating an unnecessary capital gains tax liability; Breach of fiduciary duty by Respondent Dean Witter for failure to properly supervise its employees and protect the investments of its customers; Fraudulent misrepresentation; Innocent misrepresentation; Violation of Section 10(b) of the Securities Exchange Act and SEC Rule 10b-5; Violations of Michigan Blue Sky Law; and negligence.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimants have failed to state a claim upon which relief may be granted; Claimants had full complete and contemporaneous knowledge of the transactions now complained of and therefore are precluded from relief in this matter; Claimants were fully advised of and understood the nature of the investments they made, and therefore are not entitled to relief in this matter; any decline in the value of Claimant Johnson's portfolio was the result of general market conditions and was not caused or foreseen by Respondents; and Claimants' claims are barred as a result of their failure to mitigate.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$187,962.00, plus punitive and treble damages in the amount of \$563,886.00 pursuant to common law, and attorney fees pursuant to state statute and common law.

Respondents requested dismissal and further unspecified relief. At hearing Respondents requested costs, and the expungement of Lois Budman and Mary Lou Labe CRD records.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Claimants' claims, each and all, are denied in their entirety;
- 2.) That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;

- 3.) The panel recommends the expungement of all reference to the above captioned arbitration from Respondent Lois Budman's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Budman (CRD #34670) must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 4.) The panel recommends the expungement of all reference to the above captioned arbitration from Respondent Mary Lou Labe's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Labe (CRD #1112114) must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 5.) That any relief not specifically enumerated, including punitive and treble damages is hereby denied with prejudice.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$ 375.00
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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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$ 2,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 3,500.00

#### **Adjournment Fees**

Adjournments requested during these proceedings:

May 10-12, 2000, adjournment by Respondents	= \$ 1,200.00
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### **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:

One (1) Pre-hearing session with a single arbitrator x \$450.00 = \$ 450.00  
Pre-hearing conference: September 29, 2000 1 session

Two (2) Pre-hearing sessions with Panel x \$1,200 = \$ 2,400.00  
Pre-hearing conferences: January 27, 2000 1 session  
October 30, 2000 1 session

Ten (10) Hearing sessions x \$1,200.00 = \$ 12,000.00  
Hearing Dates: January 22, 2001 2 sessions  
January 23, 2001 2 sessions  
January 24, 2001 2 sessions  
January 25, 2001 2 sessions  
January 26, 2001 2 sessions

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Total Forum Fees = \$ 14,850.00

- 1.) The Panel has assessed \$7,425.00 of the forum fees jointly and severally to Margaret M. Johnson (Individually and as Co-Trustee for the Margaret M. Johnson Revocable Living Trust) and Pamela M. Davis, Co-Trustee for the Margaret M. Johnson Revocable Living Trust.
- 2.) The Panel has assessed \$7,425.00 of the forum fees jointly and severally to Morgan Stanley Dean Witter, Inc., Lois Budman and Mary Lou Labe.

### **Fee Summary**

Claimants, Margaret M. Johnson (Individually and as Co-Trustee for the Margaret M. Johnson Revocable Living Trust) and Pamela M. Davis, Co-Trustee for the Margaret M. Johnson Revocable Living Trust, be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
Adjournment Fee	= \$ 600.00
Forum Fees	= \$ 7,425.00
<hr/> Total Fees	<hr/> = \$ 8,400.00
Less payments	= \$ 1,575.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 5,825.00

Respondent, Morgan Stanley Dean Witter, Inc., be and hereby is solely liable for:

Member Fees	= \$ 6,100.00
Total Fees	= \$ 6,100.00
Less payments	= \$ 6,100.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

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NASD REGULATION

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Respondents, Morgan Stanley Dean Witter, Inc., Lois Budman and Mary Lou Labe,  
do and hereby are jointly and severally liable for:

Forum Fees	= \$ 7,425.00
Adjourment Fee	= \$ 600.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 8,025.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 8,025.00

All balances are due to NASD Dispute Resolution, Inc.

Consenting Arbitrators' Signatures

Tracy L. Allen, Esq.  
Public Arbitrator, Presiding Chair

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

  
Robert L. Nichols, Sr.  
Public Arbitrator

2-27-01  
Signature Date

\_\_\_\_\_  
James Richter  
Industry Arbitrator

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

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Date of Service (For NASD office use only)

NASD Dispute Resolution, Inc.  
Arbitration # 99-3035  
Award Page 5 of 5

Respondents, Morgan Stanley Dean Witter, Inc., Lois Budman and Mary Lou Labe,  
be and hereby are jointly and severally liable for:

Forum Fees	= \$ 7,425.00
Adjournment Fee	= \$ 600.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 8,025.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 8,025.00

All balances are due to NASD Dispute Resolution, Inc.

**Concurring Arbitrators' Signatures**

  
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Tracy L. Allen, Esq.  
Public Arbitrator, Presiding Chair

2/26/01  
\_\_\_\_\_  
Signature Date

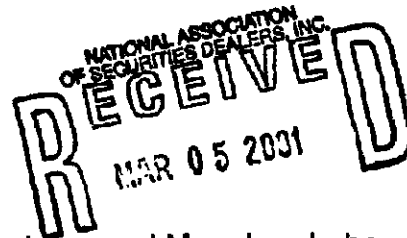
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Robert L. Nichols, Sr.  
Public Arbitrator

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Signature Date

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James Richter  
Industry Arbitrator

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

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Date of Service (For NASD office use only)



Respondents, Morgan Stanley Dean Witter, Inc., Lois Budman and Mary Lou Labe,  
be and hereby are jointly and severally liable for:

Forum Fees	= \$ 7,425.00
Adjournment Fee	= \$ 600.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 8,025.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 8,025.00

All balances are due to NASD Dispute Resolution, Inc.

**Concurring Arbitrators' Signatures**

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Tracy L. Allen, Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Robert L. Nichols, Sr.  
Public Arbitrator

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

  
\_\_\_\_\_  
James Richter  
Industry Arbitrator

MARCH 1, 2001  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Date of Service (For NASD office use only)