

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between

Names of Claimants

Azzarelli Enterprises, Ltd.
Peter J. Azzarelli, General Partner

Case No. 99-03199

Name of Respondent

Morgan Stanley Dean Witter f/k/a Dean Witter Reynolds, Inc.

REPRESENTATION OF PARTIES

For Claimants Azzarelli Enterprises, Ltd. ("Azzarelli Enterprises") and Peter J. Azzarelli, General Partner ("Azzarelli"), hereinafter collectively referred to as "Claimants": Robert R. Warchola, Esq. of the law firm of Shumaker, Loop & Dehndrick, LLP, Tampa, Florida.

For Respondent Morgan Stanley Dean Witter, f/k/a/ Dean Witter Reynolds, Inc. ("Morgan Stanley"), hereinafter referred to as "Respondent": James D. Yellen, First Vice President, Senior Attorney, Morgan Stanley, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: July 9, 1999.

Claimants signed the Uniform Submission Agreement.

Statement of Answer and Counterclaim filed by Respondent on or about: September 9, 1999.

Respondent signed the Uniform Submission Agreement: September 21, 1999.

CASE SUMMARY

Claimants alleged the following: Respondent and Claimants entered into a written agreement for Respondent to provide investment services to Claimant Azzarelli Enterprises with what is known as an Active Assets Account that had check writing privileges based on the account's margin credit feature. On or about October 18, 1996, Claimants issued a check drawn on the Active Assets Account with the Respondent, payable to Northside Bank of Tampa, Florida ("Northside"), in the amount of \$8,800.00. For reasons unclear to the Claimants, on April 2, 1997, Respondent credited Claimant Azzarelli Enterprises' Active Assets Account \$8,800.00. On April 3, 1997, Respondent debited Claimant Azzarelli Enterprises' Active Assets Account \$88,000.00. The Claimants did not give written permission for the April 3, 1997 debit as is required by the Active Assets Account Agreement.

Claimants Azzarelli Enterprises and Azzarelli asserted that Respondent breached the written agreement governing the management of the Active Assets Account and breached fiduciary and ordinary duties of care. The Claimants alleged damages and losses including, but not limited to, the transferred principal, interest paid on the debit and the amount lost in securities sold to cover the margin debit.

Respondent alleged the following: On October 18, 1996, Claimant Azzarelli Enterprises made a payment by check from its Active Assets Account to Northside in the amount of \$88,000.00. Northside made an encoding error in depositing the check for \$8,800.00 instead of \$88,000.00. When notified of the error, Respondent debited the differential from Claimants' account and paid it to the bank. Claimants' duly authorized agent, Carol Loytty, authorized the correction of the encoding error and the \$88,000.00 debit. Respondent did exactly what it was asked and required to do under the law, i.e., pay out the full amount of a check written on its clients' account.

Respondent asserted a counterclaim against Claimants which alleged that their claim was clearly frivolous and devoid of merit.

RELIEF REQUESTED

Claimants requested compensatory damages of at least \$100,000.00 plus attorneys' fees and costs and a dismissal of the counterclaim.

Respondent requested that the claim be dismissed and an award on its counterclaim of at least \$10,000.00.

OTHER ISSUES CONSIDERED AND DECIDED

At the evidentiary hearing, Claimants made a motion for a sixty (60) day continuance in order to further respond to Respondent's Statement of Answer with respect to Federal Reserve encoding procedures. The Panel denied the Claimants' motion on the grounds that the nature of the Respondent's defense was included in Respondent's Statement of Answer.

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:

1. Claimants' claims are denied in their entirety.
2. Claimants are liable, jointly and severally, and shall pay to Respondent its attorney's fees

of \$7,500.00; costs of \$4,250.00; and the sum of \$10,000.00 in damages. Attorney's fees are awarded pursuant to Section 570.105 of the Florida Civil Code.

3. In the event that there is a notation on the NASD Central Registration Depository ("CRD") with respect to Lon Hatton Sr., the Panel recommends the expungement of all references to the above captioned arbitration from Lon Hatton, Sr.'s registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notice to Members 99-09, Lon Hatton, Sr. must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

4. In the event that there is a notation on the NASD CRD with respect to Lon Paige Hatton, the Panel recommends the expungement of all references to the above captioned arbitration from Lon Paige Hatton's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notice to Members, 99-09, Lon Paige Hatton must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

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	= \$225.00
Counterclaim 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 that employed the associated persons at the time of the event giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,500.00

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 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 Panel x \$600.00	= \$600.00
Pre-hearing conference date:	December 13, 1999 1 session

Two (2) Hearing sessions x \$600.00	= \$1,200.00
Hearing Date:	January 14, 2000 2 sessions

Total Forum Fees = \$1,800.00

The Panel has assessed the total forum fees of \$1,800.00 jointly and severally to Claimants Azzarelli Enterprises, Ltd. and Peter J. Azzarelli, General Partner.

Fee Summary

Claimants Azzarelli Enterprises, Ltd. and Peter J. Azzarelli, General Partner be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 225.00
<u>Forum Fees</u>	<u>= \$1,800.00</u>
Total Fees	= \$2,025.00
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Regulation, Inc.	= \$ 600.00

Respondent be and hereby is solely liable for:

Counterclaim Filing Fee	= \$ 500.00
<u>Member Fees</u>	<u>= \$3,100.00</u>
Total Fees	= \$3,600.00
<u>Less payments</u>	<u>= \$3,600.00</u>
Balance Due NASD Regulation, Inc.	= \$ 0.00

All balances are due and payable to NASD Regulation, Inc.

Concurring Arbitrators' Signature(s)

/s/

James B. Williams
Public Arbitrator, Presiding Chair

Signature Date

/s/

Peter Allessandri
Public Arbitrator

Signature Date

/s/

Michael D. Hamilton
Industry Arbitrator

Signature Date

February 28, 2000

Date of Service (For NASD office use only)

Total Forum Fees

= \$1,800.00

The Panel has assessed the total forum fees of \$1,800.00 jointly and severally to Claimants Azzarelli Enterprises, Ltd. and Peter J. Azzarelli, General Partner.

Fee Summary

Claimants Azzarelli Enterprises, Ltd. and Peter J. Azzarelli, General Partner be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 225.00
<u>Forum Fees</u>	<u>= \$1,800.00</u>
Total Fees	= \$2,025.00
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Regulation, Inc.	= \$ 600.00

Respondent be and hereby is solely liable for:

Counterclaim Filing Fee	= \$ 500.00
<u>Member Fees</u>	<u>= \$3,100.00</u>
Total Fees	= \$3,600.00
<u>Less payments</u>	<u>= \$3,600.00</u>
Balance Due NASD Regulation, Inc.	= \$ 0.00

All balances are due and payable to NASD Regulation, Inc.

Concurring Arbitrators' Signature(s)

James B. Williams
Public Arbitrator, Presiding Chair

Signature Date


Peter Alessandri
Public Arbitrator

2/28/00
Signature Date

Michael D. Hamilton
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

Total Forum Fees = \$1,800.00

The Panel has assessed the total forum fees of \$1,800.00 jointly and severally to Claimants Azzarelli Enterprises, Ltd. and Peter J. Azzarelli, General Partner.

Fee Summary

Claimants Azzarelli Enterprises, Ltd. and Peter J. Azzarelli, General Partner be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 225.00
<u>Forum Fees</u>	<u>= \$1,800.00</u>
Total Fees	= \$2,025.00
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Regulation, Inc.	= \$ 600.00

Respondent be and hereby is solely liable for:

Counterclaim Filing Fee	= \$ 500.00
<u>Member Fees</u>	<u>= \$3,100.00</u>
Total Fees	= \$3,600.00
<u>Less payments</u>	<u>= \$3,600.00</u>
Balance Due NASD Regulation, Inc.	= \$ 0.00

All balances are due and payable to NASD Regulation, Inc.

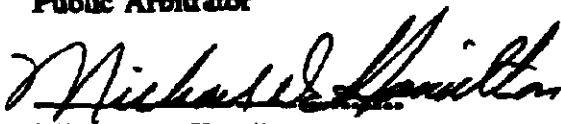
Concurring Arbitrators' Signature(s)

James B. Williams
Public Arbitrator, Presiding Chair

Signature Date

Peter Allesandri
Public Arbitrator

Signature Date


Michael D. Hamilton
Industry Arbitrator


Signature Date

Date of Service (For NASD office use only)