

**Award**  
**NASD Regulation, Inc.**

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In the Matter of the Arbitration Between:

Bomi M. Zarolia, Sherry Zarolia, Bomi Zarolia IRA, Sherry Zarolia IRA, the Yasmin Zarolia IRA and Katy Zarolia IRA (Claimants) vs. Morgan Stanley Dean Witter, Inc. and Edward H. Savitz, (Respondents).

Case Number: 99-03276

Hearing Site: Houston, Texas

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**REPRESENTATION OF PARTIES**

Claimants, Bomi M. Zarolia, Sherry Zarolia, Bomi Zarolia IRA, Sherry Zarolia IRA, Yasmin Zarolia IRA and Katy Zarolia IRA, hereinafter collectively referred to as "Claimants": Kirk Smith, Esq. and William S. Shepherd, Esq., William S. Shepherd & Associates, P.C., Houston, Texas.

Respondents, Morgan Stanley Dean Witter ("Morgan Stanley Dean Witter") and Edward J. Savitz ("Savitz"), hereinafter collectively referred to as "Respondents": Allison Barry Doneghay, Esq. and Anne Cooney, Esq., Morgan Stanley Dean Witter, Inc., Sarasota, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: July 19, 1999

Claimants signed the Uniform Submission Agreement: June 24, 1998

Statement of Answer filed by Respondents on or about: September 16, 1999

Respondent, Morgan Stanley Dean Witter, signed the Uniform Submission Agreement: September 20, 1999

Respondent, Savitz, signed the Uniform Submission Agreement: September 23, 1999

**CASE SUMMARY**

Claimant submitted the following case summary:

In July of 1998, Mr. Zarolia contacted his account executive, Savitz, and placed an order that all mutual fund holdings be converted to

money market funds. When the July statements did not reflect his order, Mr. Zarolla confronted Savitz who assured him he would immediately take action. Savitz however only converted some of the funds to money market. By the time Mr. Zarolla discovered Savitz's failure to execute his order, the market had dropped greatly. Due to Respondents actions and omissions, Claimants lost profits of approximately Two Hundred and Forty Thousand Dollars (\$240,000) exclusive of interest, attorney's fees and punitive damages.

Respondents did not file a case summary. In their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Claimants were fully advised of the relative risks and knowingly chose to assume those risks; Claimants failed to mitigate; Claimants waived any objections they may have had and should be estopped from asserting any claims; Claimants ratified and approved the subject transactions; market conditions and events not caused by or in the control of Respondents may have existed to cause certain losses; Claimants failed to state any valid claim upon which relief may be granted; Dean Witter had reasonable and adequate supervisory procedures of its account executives; all common law tort claims were barred by applicable economic loss doctrine; Claimant's claims were barred by all applicable statutes of limitations; and the Consumer Protection & Deceptive Trade Practices Act, the Texas Securities Statutes and Federal Securities Act as well as Section 27.01 of the Texas Business and Commerce Code did not apply to the events in the claim.

#### RELIEF REQUESTED

In the Statement of Claim, Claimants requested:

Compensatory Damages	\$600,000
Punitive Damages	unspecified
Interest	unspecified
Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief if any:	unspecified

Respondents requested:  
Dismissal of Claim

#### OTHER ISSUES CONSIDERED AND DECIDED

At the hearing, the Panel heard oral arguments on Claimants' Motion to Strike the Answer and Defenses, Request for Judgment on the Merits and Request for Hearing Only on Damages. The Panel denied the motion and requests.

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, Morgan Stanley Dean Witter and Edward J. Savitz, are jointly and severally liable for and shall pay to Claimants, Bomi M. Zarolia, Sherry Zarolia, Bomi Zarolia IRA, Sherry Zarolia IRA, Yasmin Zarolia IRA and Katy Zarolia IRA, \$10,325 in compensatory damages plus simple interest at the rate of 10% per annum beginning 30 days after receipt of this award;
2. Respondents, Morgan Stanley Dean Witter and Edward J. Savitz, are jointly and severally liable for and shall pay to Claimants, Bomi M. Zarolia, Sherry Zarolia, Bomi Zarolia IRA, Sherry Zarolia IRA, Yasmin Zarolia IRA and Katy Zarolia IRA, \$7,175 in costs; and
3. 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 Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$300

#### **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(s) is Morgan Stanley Dean Witter, Inc.

Member surcharge = \$1,500  
Pre-hearing process fee = \$600  
Hearing process fee = \$2,500

#### **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-

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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 Panel x \$1,125	= \$1,125
Pre-hearing conference: January 14, 2000	1 session
Four (4) Hearing sessions x \$1,125	= \$4,500
Hearing Dates: May 24, 2000	2 sessions
May 25, 2000	2 sessions
<b>Total Forum Fees</b>	<b>= \$5,625</b>

1. The Panel has assessed \$2,812.50 of the forum fees to Bomi M. Zarolia, Sherry Zarolia, Bomi Zarolia IRA, Sherry Zarolia IRA, Yasmin Zarolia IRA and Katy Zarolia IRA.
2. The Panel has assessed \$2,812.50 of the forum fees jointly and severally to Morgan Stanley Dean Witter ("Morgan Stanley Dean Witter") and Edward J. Savitz.

#### Fee Summary

1. Claimants, Bomi M. Zarolia, Sherry Zarolia, Bomi Zarolia IRA, Sherry Zarolia IRA, Yasmin Zarolia IRA and Katy Zarolia IRA, be and hereby are jointly and severally liable for:

Claim Filing Fee	= \$300
Forum Fees	= \$2,812.50

Total Fees	= \$3,112.50
Less payments	= \$1,425
Balance Due NASD Regulation, Inc.	= \$1,687.50

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

Member Fees	= \$4,600
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Total Fees	= \$4,600
Less payments	= \$4,600
Balance Due NASD Regulation, Inc.	= \$ 0

3. Respondents, Morgan Stanley Dean Witter ("Morgan Stanley Dean Witter") and Edward J. Savitz, be and hereby are jointly and severally liable for:

Forum Fees	= \$2,812.50
Total Fees	= \$2,812.50
Less payments	= \$1,200
Balance Due NASD Regulation, Inc.	= \$1,612.50

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All balances are due to NASD Regulation, Inc.

Concurring Arbitrators' Signatures



Donald K. Eckhardt, Esq.  
Public Arbitrator, Presiding Chair

6/1/00  
Signature Date

Gordon W. Hall, Esq.  
Public Arbitrator

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

Dissenting Arbitrator's Signature

\_\_\_\_\_  
(Arbitrator's Name)  
Industry Arbitrator

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

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Date of Service (For NASD office use only)

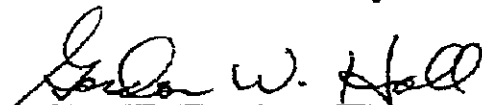
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**Concurring Arbitrators' Signatures**

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Donald K. Eckhardt, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date





Gordon W. Hall, Esq.  
Public Arbitrator

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Signature Date

**Dissenting Arbitrator's Signature**

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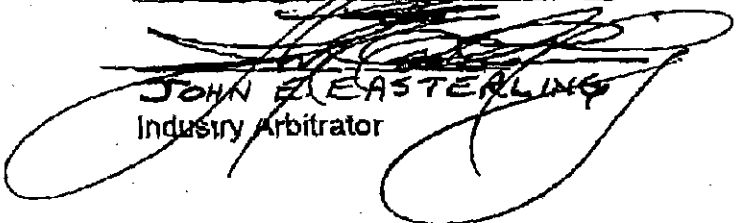
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Public Arbitrator, Presiding Chair

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Signature Date

\_\_\_\_\_  
Gordon W. Hall, Esq.  
Public Arbitrator

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

Dissenting Arbitrator's Signature

  
JOHN EASTERLING  
Industry Arbitrator

6/1/00  
\_\_\_\_\_  
Signature Date

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Date of Service (For NASD office use only)