

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

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In the Matter of the Arbitration Between

Name of Claimant

Vizcaya Capital Association, Ltd.

Case No. 99-03407

Names of Respondents

Dean Witter Reynolds, Inc.  
Isabelle N. Roux

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**REPRESENTATION OF PARTIES**

For Vizcaya Capital Association, Ltd. ("Vizcaya"), hereinafter referred to as "Claimant":  
Russell L. Forkey, Esq., Russell L. Forkey, P.A., Fort Lauderdale, Florida.

For Dean Witter Reynolds, Inc. ("Dean Witter") and Isabelle N. Roux ("Roux"), hereinafter collectively referred to as "Respondents": Allison Barry Doneghey, Vice President, Senior Attorney, Law Department, Morgan Stanley Dean Witter, Inc., Sarasota, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: July 27, 1999.

Claimant signed the Uniform Submission Agreement: August 31, 1999.

Statement of Answer filed by Respondents on or about: November 22, 1999.

Respondent Dean Witter signed the Uniform Submission Agreement: November 15, 2000.

Respondent Roux signed the Uniform Submission Agreement: November 15, 2000.

**CASE SUMMARY**

Claimant alleged the following: Claimant Vizcaya is a Bahamian company. Stephan Drexel is the president of Claimant Vizcaya. In approximately September 1998, Mr. Drexel, on behalf of Claimant Vizcaya, opened an account with Respondents. On or about November 25, 1998, Claimant Vizcaya, through Mr. Drexel, placed an order with Respondents to purchase 38,500 shares of stock in Intersystems, symbol INTAF. Instead, Respondents purchased 25,000 shares of stock in Interface Systems, symbol INTF. Claimant did not receive the confirmations of the transactions until approximately December 15, 1998, because Mr. Drexel had left town until that time. Immediately upon Mr. Drexel becoming aware of the error, he contacted Respondent Roux and advised her of the error. Respondents failed to rectify the error. Claimant directed the sale of the Interface Systems stock and the

purchase of the Intersystems stock and suffered losses as a result.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and alleged the following: All of the transactions in Claimant's account were effectuated with Claimant's full knowledge and consent. Claimant was fully advised of the relative risks inherent in its investments and knowingly chose to assume those risks. All of the transactions which Claimant effected with Respondents were thoroughly discussed with Claimant, were authorized by Claimant, and were effectuated with Claimant's full knowledge and consent. Claimant waived any objections that it may have had to the subject transactions, and should be estopped from asserting any claims regarding the transactions. Claimant ratified and approved the subject transactions through Claimant's discussions with Respondents and Claimant's authorization and instructions to proceed with the transactions at issue. No misrepresentations or omissions of material facts have ever been made by Respondents concerning the investment transactions at issue in this proceeding. The Claimant was thoroughly advised of all pertinent aspects of the investment transactions. There was no intent by Respondents to defraud the Claimant. Extraordinary market conditions and events not caused by, or in the control of, Respondents may have existed to cause certain losses which have been alleged by Claimant. Claimant failed to state any valid claim upon which relief can be granted and is not entitled to recover for any of the alleged losses and damages asserted. All common law tort claims asserted in the Statement of Claim are barred by the Economic Loss Rule as set forth by the Florida Supreme Court. Claimant is barred from recovery by its own negligence, contributory negligence, or comparative negligence. Claimant is precluded from recovery based on its failure to mitigate any damages it may have incurred.

#### **RELIEF REQUESTED**

Claimant requested compensatory damages of \$68,097.25 plus interest and costs.

Respondents requested that all claims be dismissed in their entirety.

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

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.

At the evidentiary hearing on November 15, 2000, Respondents requested dismissal of the proceeding based upon the failure of Claimant to comply with an Order of the Panel, dated October 30, 2000. Said Order compelled the production of documents by Claimant to Respondents which would verify Mr. Drexel's whereabouts from November 25, 1998 through December 15, 1998. Claimant opposed the motion and asserted that said documents did not exist. Following argument by counsel, the Panel granted Respondents' motion to dismiss.

At the evidentiary hearing on November 15, 2000, Respondent Roux requested that all

references to this matter be expunged from her Central Registration Depository ("CRD") record maintained with the NASD.

### **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:

Claimant's claims are denied in their entirety.

The Panel recommends the expungement of all references to the above-captioned arbitration proceeding from Respondent Roux' CRD record with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Roux must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

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	= \$225.00
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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. In this matter, the member firm, Dean Witter, is a party.

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

#### **Adjournment Fees**

No Adjournments were 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 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 \$750.00	= \$ 750.00
Pre-hearing conference: April 24, 2000	1 session

Two (2) Hearing sessions x \$750.00		= \$1,500.00
Hearing Dates:	November 14, 2000	1 session
	<u>November 15, 2000</u>	<u>1 session</u>
Total Forum Fees		= \$2,250.00

The Panel has assessed \$1,125.00 of the forum fees to Claimant Vizcaya.

The Panel has assessed \$1,125.00 of the forum fees to Respondent Dean Witter.

#### **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.

No administrative costs were incurred during these proceedings.

#### **Fee Summary**

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= <u>\$1,125.00</u>
Total Fees	= \$1,350.00
<u>Less payments</u>	= <u>\$975.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$375.00

Respondent Dean Witter be and hereby is solely liable for:

Member Fees	= \$3,100.00
Forum Fees	= <u>\$1,125.00</u>
Total Fees	= \$4,225.00
<u>Less payments</u>	= <u>\$3,100.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$1,125.00

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

**Concurring Arbitrators' Signatures**

/s/

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Murray S. Marsh  
Public Arbitrator, Presiding Chair

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Signature Date

/s/

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Howard J. Gilbert, MBA  
Public Arbitrator

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Signature Date

/s/

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William A. Stephenson  
Industry Arbitrator

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Signature Date

December 21, 2000  
Date of Service (For NASD-DR office use only)

Concurring Arbitrators' Signatures



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Murray S. Marsh  
Public Arbitrator, Presiding Chair

12.19.2000  
Signature Date

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Howard J. Gilbert, MBA  
Public Arbitrator

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Signature Date

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William A. Stephenson  
Industry Arbitrator

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Signature Date

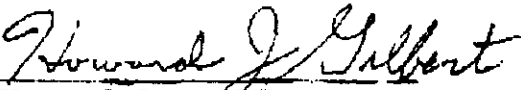
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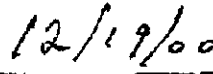
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Public Arbitrator, Presiding Chair

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Industry Arbitrator

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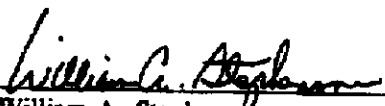
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