

AWARD
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimant(s)

Gabrielle Rhodes Handler, and Michael Scott Handler, individually, and as trustees for the Gabrielle Rhodes Handler Revocable Trust and Michael S. Handler Revocable Trust, and as custodians for the Stacy Nicole Handler UGMA Account and David Eric Handler UGMA Account

and

99-05200
Kansas City, Missouri

Name of Respondent(s)

Morgan Stanley Dean Witter
Erik A.J. Johnson

REPRESENTATION OF PARTIES

Gabrielle Rhodes Handler, and Michael Scott Handler, individually, and as trustees for the Gabrielle Rhodes Handler Revocable Trust and Michael S. Handler Revocable Trust, and as custodians for the Stacy Nicole Handler UGMA Account and David Eric Handler UGMA Account ("**Claimants**") filed this action *pro se*. On or about March 14, 2000, John J. Miller, Esq., Law Offices of John J. Miller, P.A., Overland Park, Kansas, entered his appearance for Claimants.

Morgan Stanley Dean Witter ("**Respondent Dean Witter**") was represented by John Hickey, Jr., Esq., William H. Pratt, Esq., and Jennifer M.H. Selendy, Esq., Kirkland & Ellis, New York, New York.

Erik A.J. Johnson ("**Respondent Johnson**") was represented by William D. Briendel, Esq., Greenberg Traurig, New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about November 18, 1999. Amended Statement of Claim was filed on or about March 29, 2000. Submission Agreement of Claimant Gabrielle Rhodes Handler, and Michael Scott Handler, individually, and as trustees for the Gabrielle Rhodes Handler Revocable Trust and Michael S. Handler Revocable Trust, and as custodians for the Stacy Nicole Handler UGMA Account and David Eric Handler UGMA Account was signed on November 16, 1999.

Answer of Respondent Morgan Stanley Dean Witter was filed on or about February 16, 2000. Amended Answer of Respondent Morgan Stanley Dean Witter was filed on or about May 8, 2000.

William B. Peterson signed submission Agreement of Respondent Morgan Stanley Dean Witter on February 15, 2000.

Answer of Respondent Erik A.J. Johnson was filed on or about February 16, 2000. Amended Answer of Respondent Erik A.J. Johnson was filed on or about May 23, 2000.

CASE SUMMARY

The following summary was submitted on behalf of Claimants:

In their Statement of Claim, Claimants alleged they sustained trading losses as a result of Johnson's unsuitable, pressured sales tactics and DWR's lack of supervision. In their Amended Statement of Claim, Claimants incorporated by reference their allegations from their Statement of Claim and further alleged violations of the Kansas Securities Act; fraud and misrepresentation; negligence; breach of contract; violation of NASD and NYSE Rules; and breach of fiduciary duty.

In his Answer, Johnson stated that Claimants misrepresented and/or omitted virtually every fact upon which their claims were based and generally denied the allegations. Johnson further asserted the following affirmative defenses: Claimants failed to state a claim upon which relief may be granted; Claimants are barred from any recovery against Johnson because they received verification and ratified each transaction complained of and upon which recovery is sought; Claimants have, by their conduct, waived any all claims against Johnson alleged in the Statement of Claim; Claimants failed to mitigate their damages; Claimants are estopped by their conduct from asserting the claims alleged in the Statement of Claim; If Claimants sustained damages as alleged in the Statement of Claim, any and all such damages were caused in whole or in part by the negligence and lack of due care of Claimants and without any negligence on the part of Johnson; and Claimants expressly ordered, approved, participated in and authorized the transactions complained of and upon which recovery is sought and Claimants are accordingly precluded from recovery.

In his Amended Answer, Johnson stated that Claimants misrepresented and/or omitted virtually every fact upon which their claims were based and generally denied the allegations. Johnson asserted the following affirmative defenses: Claimants failed to state a claim upon which relief may be granted; Claimants are barred from any recovery against Johnson because they received verification and ratified each transaction complained of and upon which recovery is sought; Claimants have, by their conduct, waived any all claims against Johnson alleged in the Statement of Claim; Claimants failed to mitigate their damages; Claimants are estopped by their conduct from asserting the claims allege in the Statement of Claim; If Claimants sustained damages as alleged in the Statement of Claim, and all such damages were caused in whole or in part by the negligence and lack of due care of Claimants

and without any without any negligence on the part of Mr. Johnson; and Claimants expressly ordered, approved, participated in and authorized the transactions complained of and upon which recovery is sought and Claimants are accordingly precluded from recovery.

In its Answer, DWR denied each and every allegation of wrongdoing in the Claim. DWR asserted the following affirmative defenses: Claimants' Statement of Claim fails to state a claim upon which relief may be granted and Claimants' claims are barred, in whole or in part: on the grounds that neither Johnson nor anyone else at DWR exercised discretion or control over the Claimants' accounts; by the fact that neither Johnson nor anyone else at DWR owed a fiduciary duty to Claimants; by the fact that they exercised independent judgment with respect to each investment transaction and assumed the risk of any loss; by the fact that the investments recommended by Johnson and chosen by Claimants were suitable in light of their stated investment goals; by the fact that DWR reasonably and adequately supervised Johnson throughout the time he was employed by DWR; by the doctrines of estoppel, waiver and ratification; by the fact that their losses were incurred after their accounts at DWR were already closed; and by their failure to mitigate their damages. DWR further asserted that Claimants' claims are barred because they have not suffered any damage or injury as a result of any act by DWR.

In its Amended Answer, DWR denied each and every allegation of wrongdoing in the Claim. DWR asserted the following affirmative defenses: Claimants' Statement of Claim fails to state a claim upon which relief may be granted and Claimants' claims are barred, in whole or in part: on the grounds that neither Johnson nor anyone else at DWR exercised discretion or control over the Claimants' accounts; by the fact that neither Johnson nor anyone else at DWR owed a fiduciary duty to Claimants; by the express terms of the parties' contracts, including without limitation, the choice of law provision set forth in such contracts; by the fact that neither DWR nor Johnson owed Claimants any duty of disclosure; by the fact that they exercised independent judgment with respect to each investment transaction and assumed the risk of any loss; by the fact that the investments recommended by Johnson and chosen by Claimants were suitable in light of their stated investment goals; by the fact that DWR and its agents and employees acted, at all relevant times, in accordance with industry standards and rules, including without limitation, the rules and standards established by the NASD and NYSE; by the fact that DWR reasonably and adequately supervised Johnson throughout the time he was employed by DWR; by the doctrines of estoppel, waiver and ratification; by the fact that their losses were incurred after their accounts at DWR were already closed; and by their failure to mitigate their damages. DWR further asserted that Claimants' claims are barred because they have not suffered any damage or injury as a result of any act by DWR.

RELIEF REQUESTED

In their Statement of Claim, Claimants requested return of their losses in the amount of \$741,141. On January 22, 2000, Claimants amended two paragraphs of their Statement of Claim to reflect losses on their Sunbeam stock of \$546,677.

In their Amended Statement of Claim, Claimants requested compensation for their losses in the sum of \$743,385.00; damages for the amount that Claimants' invested assets would now be worth had they been suitably managed in accordance with the Claimants' investment objectives, and/or interest as provided by statute; punitive damages to punish Respondents and to deter others from similar misconduct; Claimants' costs and expenses, including attorneys' fees; and such other relief as the panel deems just and proper.

In his Answer, Johnson requested that Claimants' claims be dismissed and that the panel award him such other and further relief as it deems just and proper.

In his Amended Answer, Johnson requested that Claimants' claims be dismissed in their entirety and that the panel award him such other and further relief as it deems just and proper.

In its Answer, DWR requested dismissal of all claims in the Statement of Claim for failure to state a cause of action; judgment denying all relief on the claims of the Statement of Claim; judgment awarding the cost of the arbitration to DWR; and such other relief as the arbitration panel deems just and proper.

In its Amended Answer, DWR requested dismissal of all claims in the Statement of Claim for failure to state a cause of action; judgment denying all relief on the claims of the statement of claim; judgment awarding the cost of the arbitration to DWR; and such other relief as the arbitration panel deems just and proper.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Erik A.J. Johnson did not file with the NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution, Inc. (the "NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Erik A.J. Johnson shall be and hereby is liable for and shall pay to Claimants Gabrielle Rhodes Handler, and Michael Scott Handler, individually, and as trustees for the Gabrielle Rhodes Handler Revocable Trust and Michael S. Handler Revocable Trust, and as custodians for the Stacy Nicole Handler UGMA Account and David Eric Handler UGMA Account the sum of \$294,119.00 (**Two Hundred Ninety Four Thousand One Hundred Nineteen Dollars**) as compensatory damages.
2. Respondent Morgan Stanley Dean Witter shall be and hereby is liable for and shall pay to Claimants Gabrielle Rhodes Handler, and Michael Scott Handler, individually, and as trustees for the Gabrielle Rhodes Handler Revocable Trust and Michael S. Handler Revocable Trust, and as custodians for the Stacy Nicole Handler UGMA Account and David Eric Handler UGMA Account the sum of \$30,000.00 (**Thirty Thousand Dollars**) as compensatory damages.
3. Interest at the rate of 5% per annum is awarded on the sum set forth in paragraph 1 above from and inclusive of April 2, 1998 to and inclusive of the date this award is paid.
4. Interest at the rate of 5% per annum is awarded on the sum set forth in paragraph 2 above from and inclusive of April 2, 1998 to and inclusive of the date this award is paid.
5. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
6. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

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 = \$375.00

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 Morgan Stanley Dean Witter.

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

Adjournment Fees

Adjournments requested during these proceedings:

March 13-16, 2001, hearing dates, adjournment requested by Morgan Stanley Dean Witter
= \$1,200.00

Forum Fees and Assessments

The Arbitration 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 Panel x \$1,200.00	= \$1,200.00
Pre-hearing conference(s): June 20, 2000 1 session	
Seven (7) Hearing sessions x \$1,200.00	= \$8,400.00
Hearing Date(s): May 15, 2001 2 sessions	
May 16, 2001 2 sessions	
May 17, 2001 2 sessions	
<u>May 18, 2001</u> 1 session	
Total Forum Fees	= \$9,600.00

The Arbitration Panel has assessed \$0.00 of the forum fees to Claimants Gabrielle Rhodes Handler, and Michael Scott Handler, individually, and as trustees for the Gabrielle Rhodes Handler Revocable Trust and Michael S. Handler Revocable Trust, and as custodians for the Stacy Nicole Handler UGMA Account and David Eric Handler UGMA Account.

The Arbitration Panel has assessed \$9,600.00 of the forum fees jointly and severally to Respondents Morgan Stanley Dean Witter and Erik A.J. Johnson.

Fee Summary

Claimants Gabrielle Rhodes Handler, and Michael Scott Handler, individually, and as trustees for the Gabrielle Rhodes Handler Revocable Trust and Michael S. Handler Revocable Trust, and as custodians for the Stacy Nicole Handler UGMA Account and David Eric Handler UGMA Account, shall be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
<u>Forum Fees</u>	= \$ 0.00
Total Fees	= \$ 375.00
<u>Less payments</u>	= \$1,575.00
Balance to be refunded by NASD Dispute Resolution, Inc.	= \$1,200.00

Respondent, Morgan Stanley Dean Witter, shall be and hereby is liable for:

Member Fees	= \$6,100.00
Adjournment Fee	= \$1,200.00
<u>Forum Fees</u>	= \$ 0.00
Total Fees	= \$7,300.00
<u>Less payments</u>	= \$6,100.00
Balance Due NASD Dispute Resolution, Inc.	= \$1,200.00

Respondents, Morgan Stanley Dean Witter and Erik A.J. Johnson, shall be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$9,600.00
Balance Due NASD Dispute Resolution, Inc.	= \$9,600.00

All balances are due to NASD Dispute Resolution, Inc.

Concurring Arbitrators:

/s/ Eric T. Williams
Eric T. Williams, Esq.
Public Arbitrator, Presiding Chair

May 29, 2001
Signature Date

/s/ Michael D. Fitzgerald
Michael D. Fitzgerald, Esq.
Public Arbitrator

May 30, 2001
Signature Date

/s/ Charles H. Lewis, Jr.
Charles H. Lewis, Jr.
Non-Public Arbitrator

May 29, 2001
Signature Date

NASD Dispute Resolution, Inc.
Arbitration No. 99-05200
Award Page 7 of 7

Fee Summary

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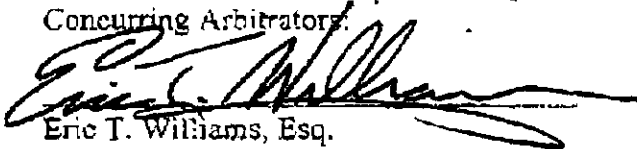
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Concurring Arbitrators:


Eric T. Williams, Esq.
Public Arbitrator, Presiding Chair

29 May 2001
Signature Date

Michael D. Fitzgerald, Esq.
Public Arbitrator

Signature Date

Charles H. Lewis, Jr.
Non-Public Arbitrator

Signature Date

NASD Dispute Resolution, Inc.
Arbitration No. 99-05200
Award Page 7 of 7

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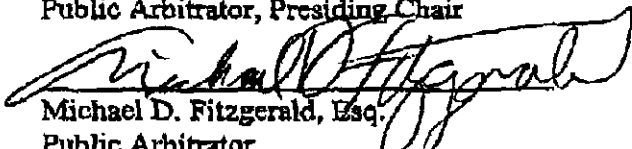
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Concurring Arbitrators:

Eric T. Williams, Esq.
Public Arbitrator, Presiding Chair


Michael D. Fitzgerald, Esq.
Public Arbitrator

Signature Date

5/30/2001
Signature Date

Charles H. Lewis, Jr.
Non-Public Arbitrator

Signature Date

NASD Dispute Resolution, Inc.
 Arbitration No. 99-05200
 Award Page 7 of 7

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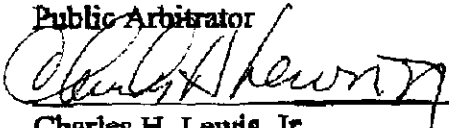
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 Eric T. Williams, Esq.
 Public Arbitrator, Presiding Chair

 Signature Date

 Michael D. Fitzgerald, Esq.
 Public Arbitrator

 Signature Date


 Charles H. Lewis, Jr.
 Non-Public Arbitrator

5/29/01
 Signature Date