

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

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In the Matter of the Arbitration Between:

Raymond M. Congelosi and Maurizio Rossitto (Claimants) vs. Morgan Stanley Dean Witter, Inc. and Thomas Bivona, (Respondents)

Case Number: 99-05291

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimants, Raymond M. Congelosi ("Congelosi") and Maurizio Rossitto ("Rossitto"), hereinafter collectively referred to as "Claimants": Howard M. Rosenfield, Esq., Hartford, Connecticut.

Respondents, Morgan Stanley Dean Witter ("MSDW") and Thomas Bivona ("Bivona"), hereinafter collectively referred to as "Respondents": Edward W. Larkin, Esq., New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: January 26, 2000

Claimant Raymond Congelosi signed the Uniform Submission Agreement: September 13, 1999

Claimant Maurizio Rossitto signed the Uniform Submission Agreement: August 10, 1999

Statement of Answer filed by Respondents on or about: April 7, 2000

Respondents did not sign the Uniform Submission Agreement.

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of fiduciary duty; misrepresentations and omissions by Respondents; violation of Section 10(b) and 20(a) of the Exchange Act and Rule 10b-5; violations of state securities laws; churning; unsuitable trading; common law fraud; conversion; recklessness; breach of contract; and failure to supervise.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: failure to object to the transactions which they now try to disavow; failure to mitigate their losses; ratification of these transactions; and statute of limitations and periods of eligibility.

Respondent asserted the following causes of action in their counterclaim: Claimants failed to

pay the debit balances owed to Morgan Stanley Dean Witter as a result of these transactions.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$113,328 for Mr. Congelosi and \$26,105 for Mr. Rossitto; market adjusted losses of \$164,280 for Mr. Congelosi and \$33,837 for Mr. Rossitto; attorneys' fees for one third contingency necessary to make Claimants "whole"; Claimants' costs and expenses in pursuing this arbitration; punitive damages to punish Respondents for their wrongful conduct; and such other relief as the Panel deems just and proper.

Respondents requested that Claimants repay the debit balance that they have maintained in the amount of \$9,290 and \$510 respectively. In addition, Respondents have requested that the Claimants' claims be dismissed and the cost of the proceeding assessed against the Claimants.

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

Respondents Morgan Stanley Dean Witter and Thomas Bivona did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but are required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the 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.

### **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. Morgan Stanley Dean Witter shall pay to Maurizio Rossitto \$15,000 in compensatory damages.
2. Claims by Raymond M. Congelosi are dismissed in their entirety.
3. Morgan Stanley Dean Witter shall pay to Maurizio Rossitto interest at a rate of 9% per annum beginning to accrue 30 days after Morgan Stanley Dean Witter receives a copy of the award.

4. All claims against Thomas Bivona are dismissed in their entirety.
5. Counterclaim by Respondents are dismissed in their entirety.
6. All other requests for relief are hereby 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	= \$ 300.00
Counter claim 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 person at the time of the events giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$ 1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 2,500.00

#### **Adjournment Fees**

Adjournments requested during these proceedings:

January 23, 2001, adjournment by Thomas Bivona	= \$1,125.00
(Panel has assessed this adjournment	
January 24, 2001 fee against MSDW)	
January 25, 2001	

#### **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 \$1,125.00	= \$ 1,125.00
Pre-hearing conference: September 7, 2000 1 session	

Four (4) Hearing sessions x \$ 1,125.00	= \$ 4,500.00
Hearing Date(s): June 20, 2001 2 sessions	
June 21, 2001 2 sessions	
<hr/> Total Forum Fees	<hr/> = \$ 5,625.00

1. The Panel has assessed \$ 2,812.50 of the forum fees against Morgan Stanley Dean Witter.
2. The Panel has assessed \$ 2,109.38 of the forum fees against Congelosi.
3. The Panel has assessed \$ 703.12 of the forum fees against Rossitto.

#### Fee Summary

1. Claimant Congelosi be and hereby is solely liable for:

Forum Fees	= \$ 2,109.38
Total Fees	= \$ 2,109.38
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 684.38

2. Claimant Rossitto be and hereby is solely liable for:

Forum Fees	= \$ 703.12
Total Fees	= \$ 703.12
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 703.12

3. Claimants Congelosi and Rossitto be and hereby are jointly and severally liable for:

Filing Fee	= \$ 300.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 300.00

4. Respondent Morgan Stanley be and hereby is solely liable for:

Counterclaim Filing Fee	= \$ 500.00
Member Fees	= \$ 4,600.00
Adjournment Fee	= \$ 1,125.00
Forum Fees	= \$ 2,812.50
Total Fees	= \$ 9,037.50
Less payments	= \$ 2,850.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 6,187.50

All balances are due and payable to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

Gayle Sanders, Esq.	-	Public Arbitrator, Chairperson
Howard Mandel, Esq.	-	Public Arbitrator
Catherine I. Gulevich	-	Industry Arbitrator

**Concurring Arbitrators' Signature(s)**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Gayle Sanders  
Gayle Sanders, Esq.  
Public Arbitrator, Chairperson

July 17, 2001  
Signature Date

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Howard Mandel, Esq.  
Public Arbitrator

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

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Catherine I. Gulevich  
Industry Arbitrator

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Signature Date

July 31, 2001  
Date of Service (For NASD office use only)

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Public Arbitrator, Chairperson

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Signature Date

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Howard Mandel, Esq.  
Public Arbitrator

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Signature Date

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Catherine I. Gulevich  
Industry Arbitrator

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Signature Date

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Public Arbitrator, Chairperson

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Signature Date


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Public Arbitrator

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Catherine I. Gulevich  
Industry Arbitrator

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July 17, 2001  
Signature Date

July 31, 2001

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Date of Service (For NASD office use only)