

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Michael A. Jones, (Claimant) vs. Discover Brokerage Direct, Inc., Knight Securities, Inc., and Morgan Stanley Dean Witter & Co., (Respondents)

Case Number: 99-03597

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Michael A. Jones, hereinafter referred to as "Claimant": Steven B. Caruso, Esq., Maddox Koeller Hargett & Caruso, New York, NY.

Respondent, Discover Brokerage Direct, Inc. ("Discover"): Robert T. Sullwood, Esq., Sullwold & Hughes, San Francisco, CA.

Respondent, Knight Securities, Inc. ("Knight"): Rick Gillette, Esq., Regulatory Counsel, Knight Securities, Inc., Jersey City, NJ.

Respondent, Morgan Stanley Dean Witter & Co. ("Morgan Stanley"), did not make an appearance in this matter.

CASE INFORMATION

Statement of Claim filed on or about: August 5, 1999.

Claimant signed the Uniform Submission Agreement: August 2, 1999.

Statement of Answer filed by Discover on or about: October 7, 1999.

Discover signed the Uniform Submission Agreement: August 27, 1999.

Statement of Answer filed by Knight on or about: October 7, 1999.

Knight signed the Uniform Submission Agreement: October 7, 1999.

Morgan Stanley did not file a Statement of Answer or sign a Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: violation of the Securities Exchange Act of 1934; violation of New York common law; fraud; negligence; breach of contract; breach of fiduciary duty; respondeat superior; violations of NASD Conduct Rules and New York Stock Exchange Rules; violation of the New Jersey Securities Act; violations of California Corporate Securities Law of 1968, California Consumer Legal Remedies Act, and California Business & Professions Code; and violation of New York General Business Laws.

Unless specifically admitted in its Answer, Discover denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to allege facts sufficient to constitute a cause of action or support an award of punitive damages; an award of punitive damages under the facts alleged would violate the United States and California constitutions; Claimant understood the risks of loss in the investments made in his account; Claimant failed to exercise reasonable care and diligence to protect himself from or to mitigate any damages that he may have sustained by reason of the matters alleged in the Statement of Claim; Claimant is barred from recovery in whole or in part by reason of his comparative fault; an award of attorneys' fees is neither supported by the facts nor permitted by applicable law; there is no private right of action for alleged violations of NASD rules or rules enacted under the California Corporate Securities Law of 1968; Claimant knew the facts concerning the alleged untruths or omissions about which he complains; Discover did not know of the alleged untruths or omissions about which Claimant complains; Claimant failed to give the notice required by Civil Code 1782 and is thereby barred from prosecuting an action based upon an alleged violation of section 1770; and monetary damages may not be awarded based upon an alleged violation of Business and Professions Code section 17500.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$37,155.32; statutory damages and/or rescission for the conduct set forth in the Statement of Claim; punitive damages in an amount to be determined; reasonable attorneys' fees; all costs and forum fees associated with this matter; damages representing lost interest and/or lost appreciation potential; and such other and further relief as may be deemed just, proper, and equitable.

Discover requested an Award in its favor.

OTHER ISSUES CONSIDERED AND DECIDED

Prior to the hearing in this matter, Claimant withdrew his claims, without prejudice, against Morgan Stanley.

Prior to a decision on the merits, Knight entered into a settlement agreement with Claimant.

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. Discover be and hereby is liable for and shall pay to Claimant the sum of \$13,500.00 as compensatory damages.
2. Claimant's request for punitive damages is hereby denied.
3. Discover be and hereby is liable for and shall pay to Claimant the sum of \$87.50, to reimburse Claimant for one half of the filing fee previously paid to NASD Dispute Resolution, Inc.
4. 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	= \$ 175.00
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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, Discover Brokerage Direct, Inc., Knight Securities, Inc., and Morgan Stanley Dean Witter & Co. are parties.

Discover Brokerage Direct, Inc.

Member surcharge	= \$ 800.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,000.00

Knight Securities, Inc.

Member surcharge	= \$ 800.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,000.00

Morgan Stanley Dean Witter & Co.

Member surcharge	= \$ 800.00
Pre-hearing process fee	= \$ 50.00

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 a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: June 9, 2000 1 session	
One (1) Pre-hearing session with Panel x \$600.00	= \$ 600.00
Pre-hearing conference: March 1, 2000 1 session	
Two (2) Hearing sessions x \$600.00	= \$1,200.00
Hearing Date: August 17, 2000 2 sessions	
<hr/> Total Forum Fees	<hr/> = \$2,250.00

1. The Panel has assessed \$1,125.00 of the forum fees against Claimant.
2. The Panel has assessed \$1,125.00 of the forum fees against Discover.

Fee Summary

1. Claimant be and hereby is solely liable for:	
Initial Filing Fee	= \$ 175.00
<u>Forum Fees</u>	= <u>\$1,125.00</u>
Total Fees	= \$1,300.00
<u>Less payments</u>	= <u>\$ 775.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 525.00

As stated in the "Award" section above, Discover is liable for and shall reimburse Claimant \$87.50, representing one half of the \$175.00 filing fee.

2. Discover be and hereby is solely liable for:	
Member Fees	= \$2,400.00
<u>Forum Fees</u>	= <u>\$1,125.00</u>
Total Fees	= \$3,525.00
<u>Less payments</u>	= <u>\$ 800.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$2,725.00

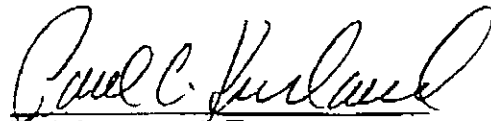
3. Knight be and hereby is solely liable for:	
<u>Member Fees</u>	= <u>\$2,400.00</u>
Total Fees	= \$2,400.00
<u>Less payments</u>	= <u>\$2,400.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

4. Morgan Stanley be and hereby is solely liable for:	
<u>Member Fees</u>	= <u>\$ 850.00</u>
Total Fees	= \$ 850.00
<u>Less payments</u>	= <u>\$2,450.00</u>
Refund Due Morgan Stanley	= \$1,600.00

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

Concurring Arbitrators' Signatures

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.



Paul C. Kurland, Esq.
Public Arbitrator, Presiding Chair

8/31/00
Signature Date

James R. MacCrate
Public Arbitrator

Signature Date

Joel G. Soren
Industry Arbitrator

Signature Date


September 5, 2000
Date of Service (For NASD office use only)

Concurring Arbitrators' Signatures

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.

Paul C. Kurland, Esq.
Public Arbitrator, Presiding Chair

Signature Date



James R. MacCrate
Public Arbitrator

8/21/00

Signature Date

Joel G. Soren
Industry Arbitrator

Signature Date

September 5, 2000
Date of Service (For NASD office use only)