

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Kevin Waite, Claimant v. Discover Brokerage Direct, Inc. (a.k.a. Morgan Stanley Dean Witter Online, Inc.), Respondent and related Counterclaimant, and Dean Galvin, and James Oerther, Respondents

Case Number: 99-05695

Hearing Site: Los Angeles, California

REPRESENTATION OF PARTIES

For Claimant:

Kevin Waite
In Pro Per
Murrieta, California

For Respondents:

Robert T. Sullwold, Esq.
Sullwold & Hughes
San Francisco, California

CASE INFORMATION

Statement of Claim filed: December 23, 1999

Claimant's Uniform Submission Agreement signed: September 29, 1999

Statement of Answer filed by Respondents Discover Brokerage Direct, Inc. (a.k.a. Morgan Stanley Dean Witter Online, Inc.) (hereinafter Morgan Stanley Dean Witter Online, Inc.) and James Oerther: February 23, 2000

Statement of Answer filed by Respondent Dean Galvin: July 13, 2000

Counterclaim filed by Respondent Morgan Stanley Dean Witter Online, Inc.: February 23, 2000

Respondent Morgan Stanley Dean Witter Online, Inc.'s Uniform Submission Agreement signed: February 23, 2000

Respondent Dean Galvin's Uniform Submission Agreement signed: May 31, 2000

Respondent James Oerther's Uniform Submission Agreement signed: May 22, 2000

CASE SUMMARY

Claimant alleged unauthorized trading of a limit order.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

Counterclaimant Morgan Stanley Dean Witter Online, Inc., alleged failure to pay debit balance.

Counterrespondent Kevin Waite did not file a response to the Counterclaim.

RELIEF REQUESTED

Claimant requested \$14,152.81 in compensatory damages and \$10,500 in punitive damages.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety, and an award of costs of arbitration and attorney's fees.

Counterclaimant Morgan Stanley Dean Witter Online, Inc., requested \$5,448.92 in compensatory damages, plus interest, costs of arbitration, and attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrator dismissed respondents Dean Galvin and James Oerther on the condition that they would appear as witnesses if called by the Claimant, and on the further condition that Morgan Stanley Dean Witter Online, Inc., will be responsible for and capable of complying with any award entered in this matter.

Respondent Morgan Stanley Dean Witter Online, Inc., did not file with the NASD Dispute Resolution, Inc., a properly executed submission agreement, but is required to submit to arbitration pursuant to the Code, and having answered the claim and appeared and testified at the hearing, is bound by the determination of the Arbitrator on all issues submitted.

The parties agreed that a handwritten, signed Award may be entered.

AWARD

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

- 1) All claims of the Claimant are denied in their entirety.
- 2) Claimant/Counterrespondent Kevin Waite is liable to and shall pay Counterclaimant/Respondent Morgan Stanley Dean Witter Online, Inc., \$677.24 in compensatory damages.
- 3) All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 125.00
Respondent Morgan Stanley Dean Witter Online, Inc.'s, Counterclaim	= \$ 500.00

Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the event of the dispute. Accordingly, the member firm Morgan Stanley Dean Witter Online, Inc., is a party and the following fees are assessed:

<u>Member Surcharge</u>	= \$ 400.00
Total Member Fees	= \$ 400.00

Forum Fees and Assessments

The Arbitrator assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair. The following fees are assessed:

(2) Pre-hearing conference sessions @ \$ 450/session		= \$ 900.00
Pre-hearing conference:	July 24, 2000	1 session
	October 16, 2000	1 session
(2) Hearing sessions @ \$450/session		= \$ 900.00
Hearings:	November 15, 2000	2 sessions
Total Forum Fees		= \$ 1,800.00

1. The Arbitrator assessed \$ 900.00 of the forum fees to Claimant.
2. The Arbitrator assessed \$ 900.00 of the forum fees to Morgan Stanley Dean Witter Online, Inc.

Fee Summary

1. Claimant, Kevin Waite, is charged with the following fees and costs:

Initial Filing Fee	= \$ 125.00
Forum Fees	= \$ 900.00
<u>Total Fees</u>	= \$ 1,025.00
<u>Less Payments</u>	= \$ (575.00)
Balance Due NASD Dispute Resolution, Inc.	= \$ 450.00
2. Respondent, Morgan Stanley Dean Witter Online, Inc., is charged with the following fees and costs:

Counterclaim Filing Fee	= \$ 500.00
Member Fees	= \$ 400.00
Forum Fees	= \$ 900.00
<u>Total Fees</u>	= \$ 1,800.00
<u>Less Payments</u>	= \$(1,150.00)
Balance Due NASD Dispute Resolution, Inc.	= \$ 650.00

All balances are payable to NASD Dispute Resolution, Inc. and are due within 30 days of the Award's date of service.

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Arbitrator's Signature

Audrey Ruben

Audrey Ruben
Public Arbitrator

11-27-00

Signature Date

November 27, 2000

Date of Service