

NYSE
New York Stock Exchange
In the Matter of Arbitration Between

Case: James W. Lee v. Morgan Stanley Dean Witter and Ray Powell
 Docket Number: 2003-012229

Attorneys:
For Claimant(s):
 Milton Fried - Kingwood, TX
 Debra Hayes - Kingwood, TX

For Respondent(s):
 Julie Glynn - New York, NY

Date Filed: 8/26/2003 First Scheduled: 3/23/2004
 Decided: 07/25/2004

Case Summary:
 Claimant, a public customer, alleges breach of fiduciary duty, overconcentration, failure to supervise, unsuitability, breach of contract and negligence. Claimant seeks damages of \$183,991.20 plus interest, costs of \$19,524.25, punitive damages of \$551,973.60 and attorneys' fees of \$82,796.04.

Product: Equity Mutual Fund Market: NYSE and NASDQ

Claim Data:		Award Data:	
Claim:	\$183,991.20	Award:	\$99,875.00
Punitive:	\$551,973.60	Punitive:	\$0.00
Atty Fees:	\$82,796.04	Atty Fees:	\$44,944.00
Deposit:	\$750.00	Costs:	\$19,524.25

Forum Fees: \$7,500.00

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1. Brief Analysis and Discussion.

Claimant contends that the Mutual Funds recommended and sold to him by Respondents did not match his risk tolerance; we agree, with respect to some of the Mutual Funds. Respondents assert they have no responsibility or liability for suitability when Claimant called seeking their advice concerning the purchase and sale of individual stocks in his IRA account; however, Respondent held himself out as a specialist in retirement-investment matters. Claimant had been a licensed insurance professional for more than 3 decades; he held a senior management position in an industry that is predicated on risks and minimizing risks, yet he testified that he was not that familiar with risk or the concept of risk. Claimant generally testified others were at-fault, but generally did not acknowledge any personal responsibility for the severe losses in his account, especially those related to the individual stocks. Claimant contends that he should have been able to rely on his broker for guidance, especially one who holds himself out as a 'retirement specialist'; we agree. However, we also agree with Respondent's contentions that Claimant caused some of his losses and failed to mitigate them. In essence, some of the damages Claimant experienced were self-inflicted.

2. Decision

The undersigned Arbitrators have decided and determined that in full and final settlement of all claims between the Parties that:



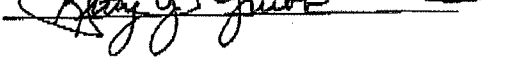
Respondents are jointly and severally liable to Claimant for: \$99,875 in damages, prejudgment interest, and lost earnings, totaled together; plus \$19,524.25 for costs; plus \$44,944 for Claimant's attorneys' fees, due to Respondents' violations of securities regulations, for a total of \$164,343.25. Additionally, by agreement (which this Panel incorporates in its award as a Consent Award), Respondents also consented to reimburse Claimant \$350 for costs related to Respondents' failure to timely supply requested Discovery.

Punitive damages are denied.

Respondents shall be jointly and severally liable for (100%) of NYSE forum fees.

The undersigned arbitrators hereby affirm that they have executed this instrument which is their award:

Arbitrators: (D = Dissents)
Kendall Hill
Joy Aldridge
Kitty Grubb

Signatures:




City, State: Birmingham, AL

Date: 07/25/2004

Sessions: 10
Hearing Dates:
3/23/2004, (3)
3/24/2004, (3)
5/7/2004, (2)
5/8/2004, (2)

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