

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimants

William C. and Marjorie D. Olander

Case No. 00-00758

Name of Respondents

Dean Witter Reynolds Inc.;
Jeffrey Lynn Davis; and
Joseph Brian Shortt

REPRESENTATION OF PARTIES

Claimants William C. and Marjorie D. Olander ("Olander") were represented by Harvey B. Morris, Esq., and Joe King, Esq., of the firm of Morris, Conchin, Banks & Cooper, located in Huntsville, Alabama.

Respondents Dean Witter Reynolds Inc. ("Dean Witter"); Jeffrey Lynn Davis ("Davis"); and Joseph Brian Shortt ("Shortt") were represented by Carl Burkhalter, Esq. and B. Allen Kilgore, Jr., Esq., of the firm of Maynard, Cooper & Gale, P.C., located in Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: February 22, 2000.

Claimants signed the Uniform Submission Agreement on or about: March 9, 2000.

Statement of Answer filed by Respondents on or about: June 1, 2000.

Respondent Dean Witter signed the Uniform Submission Agreement on or about: October 18, 2000.

Respondents Davis and Shortt did not file signed Uniform Submission Agreements.

Claimants' Response to Respondents' Answer filed on: June 21, 2000.

Respondents' Reply to Claimants' Response to Respondents' Answer filed on: August 10, 2000.

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary duty; failure to disclose material facts; and negligence. The causes of action relate to the allegations that Respondents undertook trading of stocks and mutual funds in Claimants' account without obtaining Claimants' authority for the trades. Claimant further alleged that churning occurred in the account.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses:

1. The claims are barred by waiver, ratification, acquiescence, and estoppel;
2. Claimant's claims are barred by all applicable statutes of limitations;
3. Respondents were not the proximate cause of Claimants' alleged losses;
4. The Claimants were contributorily negligent;
5. The claims are barred by the equitable doctrine of laches;
6. The Claimants' alleged losses were neither foreseeable nor reasonably foreseeable;
7. Claimants failed to mitigate their damages;
8. Claimants are not entitled to punitive damages and Respondents cannot be held liable for punitive damages pursuant to Alabama statute;
9. Respondents plead failure of consideration and merger; and
10. Respondents plead assumption of risk.

RELIEF REQUESTED

Claimants requested compensatory damages of \$68,000.00; punitive damages in an amount equal to three times actual damages, or \$204,000.00; and any and all costs of recovery, including a reasonable attorney fee.

Respondents requested that the Panel deny Claimants' claims in their entirety, clear the records of Davis and Shortt, and award Respondents their reasonable attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents Davis and Shortt 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, and the hearing briefs, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim is dismissed with prejudice and denied in its entirety;
2. The parties shall bear their own costs of arbitration, including any attorneys' fees, except for those specifically enumerated herein; and
3. Any relief not specifically awarded is 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 |
|--------------------------|------------|

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 persons 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: None.

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 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 \$1,125.00 | = \$ 1,125.00 |
| Pre-hearing conference: October 27, 2000 1 session | |
| Four 4#) Hearing sessions x \$1,125.00 | = \$ <u>4,500.00</u> |
| Hearing Dates: May 3, 2001 2 sessions | |
| May 4, 2001 2 sessions | |
| Total Forum Fees | = \$ 5,625.00 |

The Panel has determined that the forum fees shall be divided equally among the parties. Therefore:

1. The Panel has assessed \$1,406.25 of the forum fees to Claimants William C. and Marjorie D. Olander;
2. The Panel has assessed \$1,406.25 of the forum fees to Respondent Dean Witter Reynolds Inc.;
3. The Panel has assessed \$1,406.25 of the forum fees to Respondent Jeffrey Lynn Davis; and,
4. The Panel has assessed \$1,406.25 of the forum fees to Respondent Joseph Brian Shortt.

FEE SUMMARY

Claimants William C. and Marjorie D. Olander are liable for:

| | |
|---|----------------------|
| Initial Filing Fee | = \$ 300.00 |
| Forum Fees | = \$ <u>1,406.25</u> |
| Total Fees | = \$ 1,706.25 |
| Less payments | = \$ <u>1,425.00</u> |
| Balance Due NASD Dispute Resolution, Inc. | = \$ 281.25 |

Respondent Dean Witter Reynolds Inc. is solely liable for:

| | |
|---|----------------------|
| Member Fees | = \$ 4,600.00 |
| Forum Fees | = \$ <u>1,406.25</u> |
| Total Fees | = \$ 6,006.25 |
| Less payments | = \$ <u>4,600.00</u> |
| Balance Due NASD Dispute Resolution, Inc. | = \$ 1,406.25 |

Respondent Jeffrey Lynn Davis is solely liable for:

Forum Fees = \$ 1,406.25

Less payments = \$ 0

Balance Due NASD Dispute Resolution, Inc. = \$ 1,406.25

Respondent Joseph Brian Shortt is solely liable for:

Forum Fees = \$ 1,406.25

Less payments = \$ 0

Balance Due NASD Dispute Resolution, Inc. = \$ 1,406.25

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

ARBITRATION PANEL

Fred M. Acuff, Jr., Esq. - Public Arbitrator, Presiding Chair

John G. Manley, Esq. - Public Arbitrator

Claude O. Ramer, II - Non-Public Arbitrator

Concurring Arbitrators' Signatures

Fred M. Acuff, Jr., Esq.
Public, Presiding Chair

Signature Date

John G. Manley, Esq.
Public Arbitrator

Signature Date

Claude O. Ramer, II
Non-Public Arbitrator

Signature Date

Date of Service (For NASD-DR office use only)

Respondent Jeffrey Lynn Davis is solely liable for:

| | |
|---|---------------|
| Forum Fees | = \$ 1,406.25 |
| Less payments | = \$ 0 |
| Balance Due NASD Dispute Resolution, Inc. | = \$ 1,406.25 |

Respondent Joseph Brian Shortt is solely liable for:

| | |
|---|---------------|
| Forum Fees | = \$ 1,406.25 |
| Less payments | = \$ 0 |
| Balance Due NASD Dispute Resolution, Inc. | = \$ 1,406.25 |

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

ARBITRATION PANEL

Fred M. Acuff, Jr., Esq. - Public Arbitrator, Presiding Chair
John G. Manley, Esq. - Public Arbitrator
Claude O. Ramer, II - Non-Public Arbitrator

Concurring Arbitrators' Signatures

Fred M. Acuff, Jr.
Fred M. Acuff, Jr., Esq.
Public, Presiding Chair

May 31, 2001
Signature Date

John G. Manley, Esq.
John G. Manley, Esq.
Public Arbitrator

Signature Date

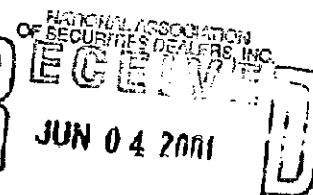
Claude O. Ramer, II
Claude O. Ramer, II
Non-Public Arbitrator

Signature Date

6-6-01
Date of Service (For NASD-DR office use only)

Respondent Jeffrey Lynn Davis is solely liable for:
Forum Fees
Less payments
Balance Due NASD Dispute Resolution, Inc.

= \$ 1,406.25
= \$
= \$ 1,406.25



Respondent Joseph Brian Shortt is solely liable for:
Forum Fees
Less payments
Balance Due NASD Dispute Resolution, Inc.

= \$ 1,406.25
= \$ 0
= \$ 1,406.25

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

ARBITRATION PANEL

Fred M. Acuff, Jr., Esq. - Public Arbitrator, Presiding Chair
John G. Manley, Esq. - Public Arbitrator
Claude O. Ramer, II - Non-Public Arbitrator

Concurring Arbitrators' Signatures

Fred M. Acuff, Jr., Esq.
Public, Presiding Chair

Signature Date

John G. Manley, Esq.
Public Arbitrator

5/31/01
Signature Date

Claude O. Ramer, II
Non-Public Arbitrator

Signature Date

6-6-01
Date of Service (For NASD-DR office use only)

Respondent Jeffrey Lynn Davis is solely liable for:

| | |
|---|---------------|
| Forum Fees | = \$ 1,406.25 |
| Less payments | = \$ 0 |
| Balance Due NASD Dispute Resolution, Inc. | = \$ 1,406.25 |

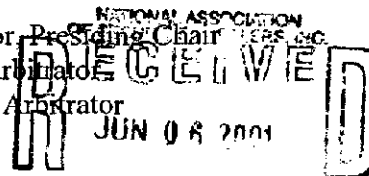
Respondent Joseph Brian Shortt is solely liable for:

| | |
|---|---------------|
| Forum Fees | = \$ 1,406.25 |
| Less payments | = \$ 0 |
| Balance Due NASD Dispute Resolution, Inc. | = \$ 1,406.25 |

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

ARBITRATION PANEL

Fred M. Acuff, Jr., Esq. - Public Arbitrator, Presiding Chair
John G. Manley, Esq. - Public Arbitrator
Claude O. Ramer, II - Non-Public Arbitrator



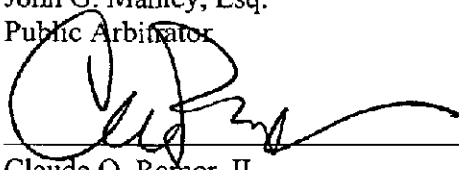
Concurring Arbitrators' Signatures

Fred M. Acuff, Jr., Esq.
Public, Presiding Chair

Signature Date

John G. Manley, Esq.
Public Arbitrator

Signature Date



Claude O. Ramer, II
Non-Public Arbitrator

6/4/01
Signature Date

6-6-01
Date of Service (For NASD-DR office use only)