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**Stipulated Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Names of Claimants

Dennis E. Hudson & Marie R. Hudson, JTEN  
and Dennis E. Hudson, IRA

Case Number: 01-00001

Names of Respondents

Dean Witter Reynolds, Inc., David C. Brown,  
and Kenneth H. Kubik

Hearing Site: Tampa, Florida

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**REPRESENTATION OF PARTIES**

Dennis E. Hudson & Marie R. Hudson, JTEN, and Dennis E. Hudson, IRA, hereinafter collectively referred to as "Claimants": William Randolph Klein, Esq., Roy W. Howard, Esq. and Floyd A. Hillstrom, Esq., Law Offices of W.R. Klein, P.A., Sarasota, Florida.

Dean Witter Reynolds, Inc., hereinafter referred to as "Respondent Dean Witter": Allison B. Doneghey, Esq., in-house counsel with Respondent Dean Witter, Sarasota, Florida.

David C. Brown, hereinafter referred to as "Respondent Brown": Michael S. Taaffe, Esq. and Jennifer B. Compton, Esq., Abel, Band, Russell, Collier, Pitchford & Gordon, Chartered, Sarasota, Florida.

Kenneth H. Kubik, hereinafter referred to as "Respondent Kubik": Allison B. Doneghey, Esq., in-house counsel with Respondent Dean Witter, Sarasota, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: January 2, 2001.

Claimant signed the Uniform Submission Agreement: April 17, 2001.

Statement of Answer filed by Respondents Dean Witter and Kubik on or about: June 8, 2001.

Statement of Answer, Motion to Dismiss, Motion to Strike Claim for Attorneys' Fees and Motion to Strike Claim for Punitive Damages filed by Respondent Brown on or about: June 8, 2001.

Respondent Dean Witter signed the Uniform Submission Agreement: August 1, 2001.

Respondent Brown signed the Uniform Submission Agreement: January 10, 2002.

Respondent Kubik signed the Uniform Submission Agreement: August 7, 2001.

### **CASE SUMMARY**

Claimants asserted the following causes of action: 1) violation of federal securities laws, namely (a) fraud in the offer and sale of securities, and (b) fraud in connection with the purchase or sale of securities, under Section 12(2) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; 2) violation of NASD Rules of Fair Practice 2110, 2120, 2310, 2330, 3010 and 3100, which constitute breach of contract; 3) common law fraud; 4) constructive fraud through breach of fiduciary duty; 5) negligence and gross negligence; and 6) unjust enrichment. The causes of action relate to the management of Claimants' accounts, including investments in Executive Telecard, Ltd. and Larson Davis, Inc.

Unless specifically admitted in their Answers, Respondents Dean Witter, Brown and Kubik denied the allegations made in the Statement of Claim and asserted various defenses.

### **RELIEF REQUESTED**

Claimants requested: 1) compensatory damages in the amount between \$75,000.00 and \$100,000.00 ; 2) rescission; 3) benefit of the bargain damages; 4) lost opportunity costs; 5) model portfolio damages; 6) damages for commissions paid; 7) statutory damages; 8) pre-judgment interest; 9) attorneys' fees; 10) costs; 11) punitive damages; and 12) such other relief the undersigned arbitrators (the "Panel") deemed just and proper.

Respondents Dean Witter and Kubik requested: 1) that all claims be denied; 2) costs and fees; and 3) an order of expungement as to Respondent Kubik's NASD Central Registration Depository ("CRD") record.

Respondent Brown requested: 1) that all claims be denied in their entirety; 2) costs and fees; and 3) an order of expungement as to Respondent Brown's NASD CRD record.

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

On or about May 24, 2002, Respondents Dean Witter and Kubik filed with NASD their notice that: 1) Claimants agreed to dismiss, with prejudice, all claims against Respondent Kubik; 2) that Claimants have agreed to execute the necessary documentation to expunge the above-captioned arbitration proceeding from Respondent Kubik's NASD CRD record; and 3) Respondent Kubik did nothing improper in connection with Claimants' accounts.

On or about May 29, 2002, Claimants filed with NASD their notice that the above-captioned arbitration proceeding has been resolved.

On or about June 3, 2002, Claimants filed with NASD their notice that: 1) Claimants agreed to dismiss, with prejudice, all claims against Respondent Kubik; 2) that Claimants have agreed to execute the necessary documentation to expunge the above-captioned arbitration proceeding from Respondent Kubik's NASD CRD record; and 3) Respondent Kubik did nothing improper in connection with Claimants' accounts.

On or about June 11, 2002, NASD received the parties' signed Stipulation for the entry of a Stipulated Award granting expungement relief in favor of Respondent Kubik. The parties have agreed to bear their own costs in the above-referenced arbitration proceeding.

On or about June 12, 2002, Arbitrator David L. Walby withdrew from the Panel. On June 12, 2002, NASD notified the parties of Arbitrator Walby's withdrawal and requested the parties to advise no later than June 21, 2002 of a party's objection to proceeding forward without the appointment of a replacement arbitrator. NASD did not receive a party's objection and did not receive a party's request for the appointment of a replacement arbitrator.

### **AWARD**

After considering the pleadings and the parties' Stipulation to the entry of this Stipulated Award, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Pursuant to the agreement of the parties, the Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Kubik's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Kubik must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$225.00
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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 persons at the time of the events giving rise to the dispute. Accordingly, Dean Witter is a member firm and is a party.

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,500.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

On or about January 22, 2002, the Panel entered its Order on Respondent's Motion Objecting to Claimants' Request for Production of Documents and Information. The Panel denied the motion and ordered that the evidentiary hearing scheduled for February 5-7, 2002 would be postponed if requested by the respondents.

On or about January 31, 2002, Respondents Dean Witter, Brown and Kubik filed their written election to postpone the evidentiary hearing. On or about February 5, 2002, the Panel affirmed the postponement of the evidentiary hearing and, the Panel assessed the postponement fee in the amount of \$750.00 jointly and severally to the Claimants.

#### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

There were no injunctive relief fees assessed during these proceedings.

#### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A 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 @ \$750.00	= \$750.00
Pre-hearing conference: August 30, 2001 1 session	
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Total Forum Fees	= \$750.00

The Panel has assessed \$375.00 of the forum fees jointly and severally to Claimants.

The Panel has assessed \$375.00 of the forum fees jointly and severally to Respondents Dean Witter, Brown and Kubik.

#### **Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

#### **Fee Summary**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 225.00
Adjournment Fee	= \$ 750.00
Forum Fees	= \$ 375.00
Total Fees	= \$1,350.00
Less payments	= \$ 975.00
Balance Due NASD Dispute Resolution	= \$ 375.00

Respondent Dean Witter is solely liable for:

Member Fees	= \$3,100.00
Total Fees	= \$3,100.00
<u>Less payments</u>	<u>= \$3,100.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents Dean Witter, Brown and Kubik are jointly and severally liable for:

Forum Fees	= \$ 375.00
Total Fees	= \$ 375.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 375.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**Parties' Signatures**

/s/  
Floyd A. Hillstrom, Esq.  
For Claimants

August 15, 2002  
Signature Date

/s/  
Allison B. Doneghey, Esq.  
For Respondents Dean Witter  
and Kubik

August 9, 2002  
Signature Date

/s/  
Michael S. Taaffe, Esq.  
For Respondent Brown

August 9, 2002  
Signature Date

**ARBITRATION PANEL**

Alexandra L. Bolton, CPA  
Barney O. Spurlock, Jr.

- Public Arbitrator, Presiding Chairperson  
- Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
Alexandra L. Bolton, CPA  
Public Arbitrator, Presiding Chairperson

August 19, 2002  
Signature Date

/s/  
Barney O. Spurlock, Jr.  
Public Arbitrator

August 20, 2002  
Signature Date

NASD Dispute Resolution  
Arbitration No. 01-00001  
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August 21, 2002

Date of Service (For NASD Dispute Resolution use only)

Respondent Dean Witter is solely liable for:

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Floyd A. Hillstrom, Esq.  
For Claimants

8/15/02  
Signature Date

\_\_\_\_\_  
Allison B. Doneghey, Esq.  
For Respondents Dean Witter  
and Kubik

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

\_\_\_\_\_  
Michael S. Taaffe, Esq.  
For Respondent Brown

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Signature Date

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### Parties' Signatures

Floyd A. Hillstrom, Esq.  
For Claimants

Signature Date

Allison B. Doneghey, Esq.  
For Respondents Dean Witter  
and Kubik

8/9/02  
Signature Date

Michael S. Taaffe, Esq.  
For Respondent Brown

8/9/02  
Signature Date

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Barney O. Spurlock, Jr.

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- Public Arbitrator

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Public Arbitrator, Presiding Chairperson

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Barney O. Spurlock, Jr.  
Public Arbitrator

Signature Date

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August 15, 2002  
Signature Date

August 9, 2002  
Signature Date

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Signature Date

**Alexandra L. Bolton, CPA**  
**Barney O. Spurlock, Jr.**

**Public Arbitrator, Presiding Chairperson**  
**Public Arbitrator**

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Alexandra L. Bolton, CPA  
Public Arbitrator, Presiding Chairperson

8/9/02  
Signature Date

**Barney O. Spurlock, Jr.**  
**Public Arbitrator**

Signature Date

Arbitration No. 01-00001

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