

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
The Ricky L. Snyder Charitable Remainder Trust

Case Number: 02-06571

Name of the Respondents
Thomas Weisel Partners, LLC
Jeffrey S. Schottenstein

Hearing Site: Washington, DC

Nature of the Dispute: Customer vs. Member and Associated Person.

REPRESENTATION OF PARTIES

Claimant, the Ricky L. Snyder Charitable Remainder Trust, by and through its Trustee Ricky L. Snyder ("Claimant"), was represented by Eliot Goldstein, Esq., Law Offices of Eliot Goldstein, LLP, Cabin John, Maryland.

Respondents, Thomas Weisel Partners, LLC ("Thomas Weisel") and Jeffrey S. Schottenstein ("Schottenstein"), hereinafter collectively referred to as "Respondents", were represented by Julie A. Kole, Esq. and Peter R. Boutin, Esq., Keesal, Young & Logan, San Francisco, California.

CASE INFORMATION

Statement of Claim filed on October 31, 2002.

Claimant signed the Uniform Submission Agreement on October 30, 2002.

Statement of Answer filed by Respondents on January 20, 2003.

Respondent Schottenstein signed the Uniform Submission Agreement on December 11, 2002.

A representative of Respondent Thomas Weisel executed the Uniform Submission Agreement on December 11, 2002.

CASE SUMMARY

Claimant asserted the following causes of action, among others: breach of contract, promissory estoppel, breach of duty, negligence, gross negligence, suitability, failure to supervise, and, common law fraud. The causes of action relate to the purchase of various unspecified stocks within the Wiesel Growth Opportunities Fund.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: Claimant approved, authorized and/or ratified the transactions complained of; proximate cause; laches; assumption of the risk; and failure to mitigate damages.

RELIEF REQUESTED

Claimant in its Statement of Claim requested compensatory damages in an amount ranging from \$775,000.00 to \$910,000.00, punitive damages of \$6,000,000.00, costs, and attorneys' fees:

Respondents in their Statement of Answer requested that the Statement of Claim be dismissed with prejudice, that the Arbitration Panel (the "Panel") recommend the expungement of all mention of this matter from the record of Respondent Schottenstein maintained by the NASD Central Registration Depository ("CRD"), and that they be awarded their costs.

OTHER ISSUES CONSIDERED AND DECIDED

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. All claims against Respondents Thomas Weisel and Schottenstein are denied in their entirety;
2. All claims for punitive damages and attorneys' fees are denied in their entirety;
3. The parties shall bear their respective costs except as Fees are specifically addressed below;
4. Any and all relief not specifically addressed herein is denied in its entirety.

FEES

Pursuant to 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 = \$ 600.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Thomas Weisel is a party.

Member surcharge = \$ 3,350.00

Pre-hearing process fee = \$ 750.00

| | |
|---------------------|---------------|
| Hearing process fee | = \$ 5,500.00 |
| Total Member Fees | = \$ 9,600.00 |

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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 @ \$1,200.00 | = \$ 1,200.00 |
| Pre-hearing conference: November 19, 2003 1 session | |

| | |
|--|---------------|
| Fifteen (15) Hearing sessions @ \$1,200.00 | = \$18,000.00 |
|--|---------------|

| | | |
|----------------|--------------------|------------|
| Hearing Dates: | June 22, 2004 | 2 sessions |
| | June 23, 2004 | 2 sessions |
| | June 24, 2004 | 2 sessions |
| | June 25, 2004 | 2 sessions |
| | September 28, 2004 | 2 sessions |
| | September 29, 2004 | 2 sessions |
| | September 30, 2004 | 2 sessions |
| | October 1, 2004 | 1 session |

| | |
|------------------|---------------|
| Total Forum Fees | = \$19,200.00 |
|------------------|---------------|

1. The Panel has assessed \$9,600.00 of the forum fees to Claimant.
2. The Panel has assessed \$9,600.00 of the forum fees jointly and severally to Respondents Thomas Wiesel and Schottenstein.

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.

- | | |
|--|-------------|
| 1. Claimant requested tape duplication | = \$ 240.00 |
|--|-------------|

EEE SUMMARY

1. Claimant is assessed and shall pay the following fees:

| | |
|-------------------------------------|----------------------|
| Initial Filing Fee | = \$ 600.00 |
| Forum Fees | = \$ 9,600.00 |
| <u>Administrative Costs</u> | <u>= \$ 240.00</u> |
| Total Fees | = \$10,440.00 |
| <u>Less payments</u> | <u>= \$ 2,040.00</u> |
| Balance Due NASD Dispute Resolution | = \$ 8,400.00 |

3. Respondent Thomas Wiesle is assessed and shall pay the following fees:

| | |
|-------------------------------------|---------------|
| Member Fees | = \$ 9,600.00 |
| Total Fees | = \$ 9,600.00 |
| Less payments | = \$ 9,100.00 |
| Balance Due NASD Dispute Resolution | = \$ 500.00 |

4. Respondents are jointly and severally assessed and shall pay the following fees:

| | |
|-------------------------------------|---------------|
| Forum Fees | = \$ 9,600.00 |
| Less payments | = \$ 00.00 |
| Balance Due NASD Dispute Resolution | = \$ 9,600.00 |

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

ARBITRATION PANEL

| | | |
|-------------------------|---|--|
| David L. Ruderman, Esq. | - | Public Arbitrator, Presiding Chairperson |
| Harold F. Reis, Esq. | - | Public Arbitrator, Panelist |
| Kurt M. Schwartz | - | Non-Public Arbitrator, Panelist |

Concurring Arbitrators' Signatures



David L. Ruderman, Esq.
Public Arbitrator, Presiding Chairperson

October 9, 2004

Signature Date

Harold F. Reis, Esq.
Public Arbitrator, Panelist

Signature Date

Kurt M. Schwartz
Non-Public Arbitrator, Panelist

Signature Date

10/11/04

Date of Service (For NASD Dispute Resolution office use only)

10/07/2004 15:12 FAX 202 728 8082

NASD DISPUTE RESOLUTION

006/006

NASD Dispute Resolution
Arbitration No. 02-06571
Award Page 5

Concurring Arbitrators' Signatures

David L. Ruderman, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Harold F. Reis
Harold F. Reis, Esq.
Public Arbitrator, Panelist

October 7, 2004
Signature Date

Kurt M. Schwartz
Non-Public Arbitrator, Panelist

Signature Date

10/11/04
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution

Arbitration No. 02-06571

Award Page 3

Concurring Arbitrators' Signatures

David L. Ruderman, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Harold F. Reis, Esq.
Public Arbitrator, Panelist

Signature Date

Kurt M. Schwartz
Kurt M. Schwartz
Non-Public Arbitrator, Panelist

10/8/04
Signature Date

10/11/04
Date of Service (For NASD Dispute Resolution office use only)