

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Roger L. Weiss

and

03-03793
Nashville, Tennessee

Name of Respondent

Waddell & Reed, Inc.

Nature of the Dispute: Customer vs. Member

Roger L. Weiss ("Claimant") was represented by Richard A. Lewins, Esq., Burg, Simpson, Eldredge, Hersh & Jardine, P.C., Dallas, Texas.

Waddell & Reed, Inc. ("Respondent") was represented by Jeffrey S. Jamieson, Esq., Blackwell, Sanders, Peper, Martin LLP, St. Louis, Missouri.

CASE INFORMATION

The Statement of Claim was filed on or about May 27, 2003. The Submission Agreement of Claimant Roger L. Weiss was signed on or about April 21, 2003.

The Statement of Answer was filed by Respondent Waddell & Reed, Inc. on or about August 6, 2003. The Submission Agreement of Respondent Waddell & Reed, Inc. was signed on or about August 26, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: common law fraud; misrepresentations and omissions; violations of state and federal securities laws; negligence; failure to supervise; breach of contract; and breach of fiduciary duty. The causes of action relate to the order execution of Class B share mutual funds. The Claimant alleged that the Respondent mismanaged and gave improper advice relating to his brokerage accounts that led to a significant loss of his life savings.

Claimant specifically stated the following:

Despite Wilhem's knowledge of Mr. Weiss' need for retirement income, Wilhem (broker) placed almost the entire Weiss portfolio, approximately \$750,000 worth of

investments, in proprietary Class B share mutual funds. Such an investment is well known within the securities industry as being unsuitable for people such as Mr. Weiss. This had the result of increasing the commissions to Waddell and Reed and Wilhem. It also caused Mr. Weiss to incur excessive charges each time he needed one of his frequent withdrawals of funds. The investment in Class B shares over Class A shares caused Mr. Weiss to lose breakpoint and volume discounts and incur other costs that he would not incur with Class A share mutual funds. The investment also inhibited the ability of Mr. Weiss to freely move his accounts for years subsequent to these purchases. These purchases were done without notifying Mr. Weiss that he was being invested in Class B shares or that he would be losing discounts and incurring additional costs by not being in Class A share funds. Additionally, the securities were unsuitable in that they were overly growth oriented and Wilhem increased the risk of loss by overconcentrating the account in equities. Given Mr. Weiss' need for income, his money should not have been invested primarily in mutual funds in any event; a significant portion should have been invested in income producing investments such as bonds.

Unless specifically admitted in its Answer, Respondent Waddell & Reed, Inc. denied the allegations made in the Statement of Claim and asserted the following defenses: The allegations in the Statement of Claim fail to state a claim upon which relief can be granted; Claimant's claims are barred by the doctrines of waiver, estoppel, acquiescence, ratification and laches in that Claimant knew or should have known or otherwise had access to information regarding his investments and the status of his accounts; Further, Claimant received account statements and confirmations regarding the activities in his accounts and did not object to the transactions in his accounts; Moreover, Claimant selected and approved each transaction in his accounts; Claimant's failure to object to the transactions in his accounts within a reasonable time after their occurrence is and was an intentional and/or negligent act on the part of Claimant; These acts caused prejudice to Respondent in that Respondent was unable to take any steps to discover the alleged facts and take any actions or prevent the alleged loss; Claimant's claims are barred by reason of Claimant's negligence and/or fault that caused or contributed to the damages of which Claimant complains; As previously stated, Claimant received account statements and confirmations relating to the transactions in his account and negligently failed to inform Respondent of any objection to the transactions in his accounts; This negligence contributed to and was the primary cause of any and losses suffered by Claimant; Claimant has failed and continues to fail to take steps reasonably necessary to mitigate his damages, if any; Any damage or injury allegedly sustained by Claimant, or the consequence of a known risk and were voluntarily and knowingly undertaken by Claimant and, thus, Claimant is barred from recovery thereof; Claimant's damages, if any, were caused by market forces over which Respondent had no control; Claimant directed and authorized the execution of all transactions in his accounts, and therefore, is stopped from bringing this action; The purported wrongdoing of Respondent was not the proximate cause of any losses for which Claimant seeks recovery; Claimant assumed the risk of any damages alleged suffered by Claimant and, Claimant is recovery thereof; Claimant failed to perform the required conditions precedent as to each purported cause of action in the Statement of Claim; The

Statement of Claim, and each purported cause of action therein, fail to state facts sufficient to constitute a claim against Respondent for attorney's fees; Claimant has failed to state a claim for punitive damages and in any event, an award of exemplary or punitive damages in this case would violate the due process clause of the United States Constitution and would violate the Pennsylvania or Tennessee Constitutions, including for the reasons that such damages are awarded in a vague and arbitrary manner, without any upper limit, and without applications of proper standards and guidelines; Any award of exemplary or punitive damages in excess of or disproportionate to legislatively establish punishments for similar conduct would further violate the due process clause protections of the United States and Pennsylvania or Tennessee Constitutions; An award of exemplary or punitive damages in this case would violate the contracts clause of the United States Constitution; An award of exemplary or punitive damages in this case would violate the excessive fines clause of the Pennsylvania or Tennessee Constitutions, including for the reason that such damages are awarded without any upper limit and may be awarded in amounts in excess of or disproportionate to legislatively established punishments for similar conduct; and, Claimant's claims are barred by the applicable statute limitations.

RELIEF REQUESTED

Claimant requested an award in the amount of \$170,000.00 as compensatory damages, plus interest, attorney's fees, costs and expenses of pursuing this arbitration claim.

Respondent requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and for such other and further relief as the arbitration panel deems just and proper.

OTHER ISSUES CONSIDERED & DECIDED

The Respondent's Pre-hearing Brief was submitted on or about June 7, 2004.

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "NASD").

AWARD

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

1. Respondent Waddell & Reed, Inc. is liable for and shall pay to Claimant Roger L. Weiss, the sum of \$15,104.00 (Fifteen Thousand One Hundred and Four Dollars and No Cents) as compensatory damages.
2. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

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 = \$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 person at the time of the event giving rise to the dispute. In this matter, the member firm is Waddell & Reed, Inc.

Member surcharge	\$	1,700.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	<u>2,750.00</u>
Total Member Fees	\$	5,200.00

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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:

1 Pre-hearing session with Panel	x	1,125.00	\$	1,125.00
November 10, 2003	1	Session		
6 Hearing sessions	x	1,125.00		6,750.00

June 16, 2004	2	Sessions	
June 17, 2004	3	Sessions	
June 18, 2004	1	Session	
Total Forum Fees			\$ 7,875.00

The Arbitration Panel has assessed \$3,937.50 of the forum fees to Roger L. Weiss.

The Arbitration Panel has assessed \$3,937.50 of the forum fees to Waddell & Reed, Inc.

Fee Summary

Claimant, Roger L. Weiss, shall be and hereby is liable for:

Initial Filing Fee	= \$	300.00
<u>Forum Fees</u>	= \$	<u>3,937.50</u>
Total Fees	= \$	4,237.50
<u>Less payments</u>	= \$	<u>-1,425.00</u>
Balance Due NASD Dispute Resolution	= \$	2,812.50

Respondent, Waddell & Reed, Inc., shall be and hereby is liable for:

Member Fees	= \$	5,200.00
<u>Forum Fees</u>	= \$	<u>3,937.50</u>
Total Fees	= \$	9,137.50
<u>Less payments</u>	= \$	<u>-5,200.00</u>
Balance Due NASD Dispute Resolution	= \$	3,937.50

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

ARBITRATION PANEL

Robert S. Brandt, J.D. - Public Arbitrator, Presiding Chair
Fred W. Beesley, Jr., Esq. - Public Arbitrator
Richard G. Isaac - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Robert S. Brandt, J.D.

Robert S. Brandt, J.D.

Public Arbitrator, Presiding Chair

07/02/04

Signature Date

/s/ Fred W. Beesley, Jr., Esq.

Fred W. Beesley, Jr., Esq.

Public Arbitrator

07/06/04

Signature Date

/s/ Richard G. Isaac

Richard G. Isaac

Non-Public Arbitrator

06/30/04


Signature Date

07/06/04

Date of service

NASD Dispute Resolution
Arbitration No. 03-03793
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Public Arbitrator, Presiding Chair


Signature Date

Fred W. Bessley, Jr., Esq.
Public Arbitrator

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Richard G. Isaac
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NASD Dispute Resolution

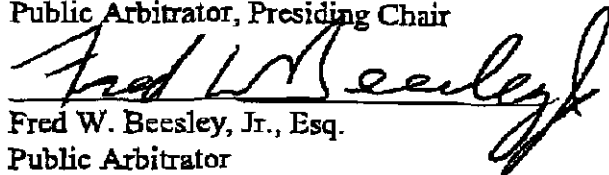
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