

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Joel D. Kurtz

91-02050

Name of Respondents

William McMahon
Dean Witter Reynolds, Inc.

REPRESENTATION OF PARTIES

For Claimant at the hearing: William A. Erhart, Esq. of Marvin & Erhart, Anoka, Minnesota.

For Respondents at the hearing: Scott E. Richter, Esq. of Popham Haik Schnobrich & Kaufman, Minneapolis, Minnesota.

CASE INFORMATION

Statement of Claim filed: July 1, 1991. Claimants' Submission Agreement signed on: June 17, 1991.

Joint Statement of Answer filed by Respondents on: January 23, 1992.

HEARING INFORMATION

Hearing dates/Sessions: August 25, 1992 for two (2) sessions,
August 26, 1992 for two (2) sessions,
December 14, 1992 for two (2) sessions,
December 15, 1992 for two (2) sessions,
January 8, 1992 for one (1) session.

Hearing Location: Minneapolis, Minnesota.

CASE SUMMARY

Claimant Joel Kurtz ("Kurtz") alleged that Respondents, William McMahon ("McMahon") and Dean Witter Reynolds ("DW") violated Section 12(2) of the 1933 Securities

Act, violated Section 10(b) and 10(b)-5, violated Minnesota Statute Section 80A.01, violated Minnesota Statute Section 80A.03, and Minnesota Rules Section 2875.1050A Fraudulent and Deceptive Practice, violated Section 20A of the Securities Exchange Act of 1934, committed common law fraud, engaged in negligent misrepresentation, breached fiduciary duties, was negligent, and violated the Rico Act.

Kurtz alleged that he was induced to purchase and later, within the rescission period, persuaded by McMahon to hold onto fifty thousand shares of High Income Advantage Trust III ("Hiat III"), a bond fund. Kurtz further alleged that he was informed of the safety and security and high rate of return that the Hiat III bond fund provided. Kurtz also alleged that he was not provided a prospectus before his decision to purchase the Hiat III or told that the high yield bonds which comprised the Hiat III did not carry an investment grade rating by Moody's Investors Services or Standard and Poor's Corporation on that the greater return of investment was offered because of the lower rate of securities in the bond Hiat III. Kurtz alleged that the Hiat III investment was unsuitable for him. Kurtz also alleged that he had purchased Zeos and Valid Logic stock, but was forced to sell these stocks when Hiat III had fallen in price.

Respondents DW and McMahon denied liability. DW and McMahon alleged that Kurtz knew he was taking certain risks with Hiat III because they disclosed the risks to him. DW and McMahon also alleged that they did not mislead Kurtz and they believed that Hiat III would perform well. DW and McMahon raised the statute of limitations as a defense to the claim, denied violating any of the statutes which Kurtz asserted in his claim, denied violating Rico, alleged that Kurtz failed to mitigate his damages, alleged that Kurtz's claims for damages are inflated and improper, and alleged that Kurtz's claim for attorney's fees is improper.

RELIEF REQUESTED

Claimant requested an Award in his favor against Respondents, jointly and severally, as follows: damages in the amount of \$419,378.00 which represents \$131,340.00 for the purchase at \$10.00 per share of the remaining shares he owns which is 13,134 shares, \$196,986.00 for the loss of the sales required because of the margin call of 37,600 shares was calculated as the difference between the \$10.00 purchase price and the actual proceeds received from the sale, \$32,333.00 for the difference between the \$5300.00 per month which Kurtz was guaranteed minus the actual amount received; \$2140.00 for the interest charge for March of 1989, and \$56,579.00 for the losses incurred as a result of the forced sale on Zeos and Valid Logic due to the margin calls; attorney's fees in the amount of \$139,792.00, treble damages under the RICO Act in the amount of \$1,026,647.25 or as an alternative, for an Award of punitive damages in the sum of \$560,000.00 plus interest, costs, disbursements and other further relief deemed just and equitable.

Respondents requested that the claim should be denied in all respects.

OTHER ISSUES CONSIDERED & DECIDED

The parties present at the hearing have agreed that the Award in this matter may be executed by 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 remains on file with the NASD.

The panel has determined that the official record of the proceeding will be the court reporter's transcript. The official record was reported by Stirewalt & Associates Court Reporters, P.O. Box 18188, Minneapolis, Minnesota.

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. Respondents Dean Witter Reynolds, Inc. and William McMahon, shall be and hereby are, jointly and severally liable for, and shall pay to the Claimant, Joel Kurtz, ten dollars (\$10.00) per share for the 13,134 shares in Hiat III which Kurtz still owes;
2. The Claimant, Joel Kurtz, shall tender all rights and interests presently held in the 13,134 shares of Hiat III, to the Respondents, Dean Witter and William McMahon jointly and severally;
3. Respondents Dean Witter and William McMahon shall also, jointly and severally, pay to the Claimant, Joel Kurtz, damages in the sum of Eighty Two Thousand Five Hundred Thirty One Dollars (\$82,531.00);
4. Claimants' request for interest is denied;
5. Respondents, Dean Witter and William McMahon, shall be and hereby are jointly and severally liable for, and shall pay to the Claimant, Joel Kurtz, attorney's fees in the sum of Thirty Thousand Dollars (\$30,000.00). Attorney's fees were granted under the authority of Minnesota Statute Section 80A.23, subd.2;
6. Claimant's requests for treble damages and punitive damages are denied;

7. Respondents Dean Witter and William McMahon shall be and hereby are, jointly and severally liable for, and shall pay to the Claimant, Joel Kurtz, costs in the sum of Nine Thousand Nine Hundred Sixty Three Dollars (\$9,963.00). Costs were granted under the authority of Minnesota Statute Section 80A.23, subd.2.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

9 hearing sessions X \$1000.00 = \$9000.00

Pursuant to Section 43(c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$250.00, and shall retain the hearing session deposit in the amount of \$1,000.00 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$4000.00 are assessed against Claimant Joel Kurtz and \$4000.00 are assessed against Respondents Dean Witter Reynolds and William McMahon, jointly and severally.

Respondents Dean Witter and William McMahon, shall also, jointly and severally, reimburse to the Claimant, Joel Kurtz, \$1000.00 which represents the hearing session deposit he previously deposited with the NASD.

The additional Forum fees are assessed by the arbitration panel are payable to the National Association of Securities Dealers, Inc.

Panel Members Concurring:

Dated:

Lawrence R. Commers, Esq.
Chairperson
Public Arbitrator

2/16/93

Louis S. Schoen
Public Arbitrator
Panelist

Emily B. Boote
Industry Arbitrator
Panelist

Date of Service by the NASD: _____

The additional Forum fees are assessed by the arbitration panel are payable to the National Association of Securities Dealers, Inc.

Panel Members Concurring:

Dated:

Lawrence R. Commers, Esq.
Chairperson
Public Arbitrator

Louis S. Schoen
Public Arbitrator
Panelist

2-15-93
Emily H. Boote
Emily H. Boote
Industry Arbitrator
Panelist

Date of Service by the NASD: _____

The additional Forum fees are assessed by the arbitration panel are payable to the National Association of Securities Dealers, Inc.

Panel Members Concurring:

Dated:

2-26-93



Lawrence R. Commers, Esq.
Chairperson
Public Arbitrator

Louis S. Schoen
Public Arbitrator
Panelist

Emily B. Boote
Industry Arbitrator
Panelist

Date of Service by the NASD: _____

The additional Forum fees are assessed by the arbitration panel are payable to the
National Association of Securities Dealers, Inc.

Panel Members Concurring:

Dated:

2-26-83



Lawrence R. Commers, Esq.
Chairperson
Public Arbitrator

Louis S. Schoen
Public Arbitrator
Panelist

Emily B. Boote
Industry Arbitrator
Panelist

Date of Service by the NASD: _____