

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Richard & Deborah Sidorowicz

91-04136

Name of Respondents

Dean Witter Reynolds Inc.
Stephen J. Lozen

REPRESENTATION

For Claimant Richard and Deborah Sidorowicz ("Claimants"): Harry S. Miller, Esq. and Samuel M. Shafner, Esq. of the law firm of Shafner & Gilleran.

For Respondent Dean Witter Reynolds, Inc. and Stephen J. Lozen (collectively referred to as "Respondents"): Paul Dutka, Esq. of the law firm of Skadden, Arps, Slate, Meagher & Flom.

CASE INFORMATION

Statement of Claim filed: December 30, 1991
Amended Statement of Claim filed: July 15, 1992
Claimants' Submission Agreement signed on: December 30, 1991

Dean Witter Reynolds, Inc. ("DWR") Statement of Answer filed by Respondents on: March 6, 1992
Stephen J. Lozen ("Lozen") Statement of Answer filed on: March 19, 1992
Joint Statement of Answer to Claimants' Amended Statement of Claim filed by Respondents on: August 24, 1992
DWR's Submission Agreement signed on: March 3, 1992
Lozen's Submission Agreement signed on: March 13, 1992

HEARING INFORMATION

Pre-Hearing Conference: December 23, 1992 for one session with the Chairman and December 30, 1992 for one session with the Chairman

Hearing Dates/Sessions:	January 12, 1993 - one session
	April 20, 1993 - two sessions
	April 21, 1993 - two sessions
	April 22, 1993 - two sessions
	April 23, 1993 - two sessions
	May 3, 1993 - two sessions
	May 4, 1993 - two sessions

May 5, 1993 - one session

Hearing Location: NASD Office, Boston, MA

CASE SUMMARY

Claimants alleged that Respondents invested Claimants' account unsuitably in extremely risky stocks and options, including naked puts and options. Claimants alleged that Respondents invested over \$300,000 in one speculative high risk pharmaceutical research and development limited partnership, misrepresenting to Claimants that it was a conservative, safe, cash flow, income producing investment. Claimants alleged that Respondents churned Claimants account with the majority of the sales occurring within ten days of the purchase, generating commissions, fees and margin interest of approximately \$150,000, plus approximately \$30,000 in commissions on the limited partnership investment. Claimants alleged that Respondents failed to protect Claimants interests and investments by making trades that were unsuitable for Claimants, that were not understood by Claimants and which the Claimants could not afford. Claimants alleged that Lozen represented to Claimants that he was making investment decisions based upon non-public inside information and guaranteed to Claimants that they would achieve positive results. Claimants alleged that Respondents transferred stock into Claimants' account long after making the purchase in "Robin Hooding" transactions as part of a scheme to induce Claimants to allow Lozen to unlawfully park stock in Claimants' account. Claimants alleged that Respondents margined Claimants' account without their understanding or informed consent and without explaining to Claimants that leaving a low equity would result in costly margin interest charges. Claimants alleged that Respondents failed to explain to Claimants the risks involved in speculative trading of options and the risk associated with purchasing the limited partnership that Lozen recommended. Claimants alleged that Respondents took advantage of Claimants lack of sophistication and that Lozen intentionally took control over Claimants' account to trade excessively in unsuitable stocks. Claimants alleged that Respondents made material misrepresentation and omissions regarding the status of Claimants' account and investments in the account.

Respondents DWR and Lozen asserted that Claimants' claim is barred by both the six year eligibility requirement of Section 15 of the Code of Arbitration Procedure ("Code") and by the applicable statutes of limitations. Respondents categorically denied all allegations of wrongdoing alleged by Claimants. Respondents maintained that Claimants, specifically Mr. Sidorowicz ("Sidorowicz"), were sophisticated investors. Respondents maintained that Sidorowicz was a highly successful businessman, with prior experience both in the securities market and in real estate. Respondents maintained that Sidorowicz spoke with or visited Lozen virtually every day. Respondents maintained that Sidorowicz was aware of and approved every trade made on Claimants behalf. Respondents maintained that Sidorowicz took an active role in initiating stock purchases and that some of Claimants largest losses were sustained in stocks that Sidorowicz picked himself. Respondents maintained that Sidorowicz' number one investment objective was speculation. Respondents maintained that Lozen tried to steer Sidorowicz into more conservative investments. Respondents maintained that Lozen urged Sidorowicz to consult with his accountant before making into the investments in Transco Exploration Partners, Ltd. ("Transco") and Paco Development Partner II ("PACO"), two limited partnerships that Lozen had recommended.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$596,021, plus market-adjusted damages through the end of the trading period, interest at the Massachusetts statutory rate of 12% per annum thereafter, attorneys' fees, costs of the arbitration and punitive damages in such amount as the arbitrators deem appropriate.

Respondents requested that Claimants' claim be dismissed in its entirety and that Respondents be awarded costs and attorneys' fees, and such other, further and different relief as the Panel may deem just and proper.

OTHER ISSUES CONSIDERED & 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. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

AWARD

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

1. Respondents DWR and Lozen are jointly and severally liable to Claimants and shall pay to Claimants the sum of \$423,059.00¹; this amount is exclusive of interest. The damages were assessed as follows:
 - a. That Respondents DWR and Lozen are jointly and severally liable to Claimants for their losses sustained in the PACO investment and shall pay to Claimants the sum of TWO HUNDRED FIFTY-SIX THOUSAND NINE HUNDRED TWENTY AND 00/100 DOLLARS (\$256,920); exclusive of interest.
 - b. That Respondents DWR and Lozen are jointly and severally liable to Claimants for their loss in Transco and shall pay to Claimants the sum of SIXTY THOUSAND ONE HUNDRED THIRTY-NINE AND 00/100 DOLLARS (\$60,139); exclusive of interest.
 - c. Respondents DWR and Lozen are jointly and severally liable to Claimants for attorneys' fees and shall pay to Claimants the sum of ONE HUNDRED SIX THOUSAND AND 00/100 DOLLARS (\$106,000); exclusive of interest. Attorneys' fees are awarded in reliance on M.G.L. c110A, Section 410, which provides for an award of costs and reasonable attorneys' fees for violations of Massachusetts Securities Act. Also pursuant to the Federal Arbitration Act, arbitrators have inherent equitable power to fashion appropriate awards, including the award of attorneys' fees and costs of arbitration. Raytheon Co. v. Automated Business Systems, Inc. 882 F.2d 6 (1st Cir. 1989); Hunt v. Mobil Oil Corp. 654 F.Supp. 1487 (S.D. N.Y., 1987).
2. Claimants' claim for punitive damages is denied in their entirety.
3. All other claims and motions are denied in their entirety.
4. Each of the parties shall bear their own costs and expenses incurred, other than those specifically provided for herein.

FORUM FEES

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

2 pre hearing conference sessions with the Chairman x \$300 = \$600

¹ Arbitrator Benjamin H. Rutstein, II dissents from this part of the Award. Arbitrator Rutstein would not find liability against Lozen, but solely against DWR.

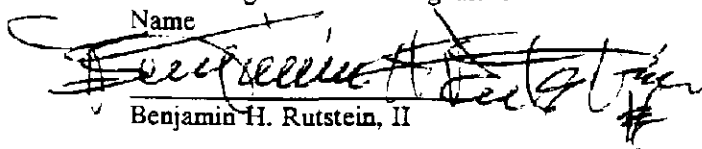
14 hearing sessions x \$1000 = \$14,000

Pursuant to Section 43(c) of the Code, forum fees are assessed against Respondent DWR. Respondent DWR is directed to reimburse to Claimants their hearing session deposit of \$1,000; which Claimants previously deposited with the NASD. Respondent DWR is directed to pay the additional forum fee assessment of \$13,600 to the NASD.

Concurring Arbitrator's Signature

Name

Public/Industry


Benjamin H. Rutstein, II

Date of Decision: May 21st, 1993

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14 hearing sessions x \$1000 = \$14,000

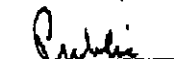
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Concurring Arbitrator's Signature

Name


J. Paul Finnegan

Public/Industry

Date of Decision: May 14, 1993

NASD DATE OF DECISION: May 21st, 1993

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14 hearing sessions x \$1000 = \$14,000

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Concurring Arbitrator's Signature

Name

John R. Thompson
John R. Thompson

Public/Industry

Public

Date of Decision: May 14, 1993

NASD DATE OF DECISION: May 21st, 1993