

N.A.S.D. AWARD
NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Charles Malkasian & Violet M. Malkasian

92-02714

Name of Respondents

Dean Witter Reynolds Inc.
Frank J. Perna

REPRESENTATION

For Claimant: Jeffrey A. Sellers, Esq.

For Respondent: Elizabeth Hill, Esq. of Dean Witter Reynolds, Inc.

CASE INFORMATION

Statement of Claim filed: August 12, 1992.

Claimant's Submission Agreement signed on: August 7, 1992.

Joint Statement of Answer filed by Respondents on: November 13, 1992.

Respondent Dean Witter Reynolds, Inc.'s Submission Agreement signed on: November 9, 1992.

Respondent Francis J. Perna's Submission Agreement signed on: November 6, 1992.

HEARING INFORMATION

Hearing Date/Session: May 27, 1993 - 2 Sessions

Hearing Location: Hyatt Regency Buffalo, 2 Fountain Plaza, Buffalo, New York 14202

CASE SUMMARY

Claimants, alleged that Respondents engaged in misrepresentation as to the nature and purpose of an investment in Prime Motor Inns Limited Partnership (hereinafter, "Prime") and that such an investment was not suitable considering the stated investment objectives of Claimants. Claimants maintained that they advised Mr. Perna that their primary objectives in investing were safety of principal and growth, and that Respondent recommended an investment in Prime, stating that it was an investment in real estate. Claimants further maintained that repeated requests for liquidation of their interest in the stock as it reached new lows was met by argument and representation from Respondent that the decline in value was merely a market fluctuation.

Claimants maintained that the stock became worthless, and that a review of the Prospectus indicates that Prime is not an investment in real estate but is structured to obtain a fee interest or ownership of the real estate in nine Hiliday Inns. Additionally, Claimants maintained that the stated objectives of Prime are not growth, but distribution of income to be earned from the operation of the inns or the sale of the partnerships interest in the inns, assuming the individual inn is a profitable hotel venture.

Claimants further alleged that after discussing Mr. Malkasian anticipated retirement and investment objectives of safety of principal and growth, Respondent recommended an investment in Dean Witter High Yield Securities, and on or about April, 1989, Mr. Malkasian invested Two Thousand Two Hundred Fifty Dollars in it. Claimants maintained that they expressed concern as the value of the investment began to drop, and that Respondnet advised them that the drop in value was only a temporary drop, being the result of market fluctuations.

Claimants further maintained that Mr. Malkasian finally forced the sale of the investment, which resulted in a loss. Claimants alleged further that the prospectus indicates that Dean Witter High Yield Securities is a fund that invested in securities which have an investment rating that is characterized as lacking outstanding investment characteristics and having speculative characteristics as well.

Respondents maintained that the action should be dismissed not only on the merits but because the complaint is barred by the Statute of Limitations, as well as the doctrines of waiver and estoppel, ratification and affirmance and accord and satisfaction. Respondents alleged that the Claimants' objective in investing was to earn tax advantaged income, and that the investment in Prime was consistent with this objective, as well as with their previous investment history.

Respondents further alleged that Claimants never indicated that they desired to sell their investment in Prime, and that the investment in Dean Witter High Yield Fund was explained to the claimants, that they received a prospectus disclosing the nature of its portfolio and the risks involved, and that the fund had been in existence for ten years and had a good track record. Respondents further maintained that although Claimants received trade confirmations and monthly statements, they did not timely object to any of the transactions regarding their authorization, suitability or for any other reason and thus waived any objections they might have

had to the transactions and should now be estopped from asserting any claims at this time. Respondents also alleged that Claimants, by their conduct, ratified and approved of the transactions, and that they knowingly assumed the risk associated with these transactions. Respondents deny making misrepresentations or omissions of material fact concerning the investments.

RELIEF REQUESTED

Claimants requested damages in the sum of Twenty Thousand Dollars (\$20,000.00) plus interest, representing their initial investment in Prime, or in the alternative, Fourteen Thousand Dollars (\$14,000.00) that being the value of the stock when Claimants first directed it be sold at Fourteen Dollars a share, plus interest from the date the stock reached Fourteen Dollars (\$14.00) a share in 1987. Claimants also seek reimbursement of the loss sustained from the purchase of Dean Witter High Yield Securities in the amount of Five Hundred and Eighty Five Dollars (\$585.00) plus interest at the rate of 9% per annum on the sum of Two Thousand Two Hundred Fifty Dollars (\$2,250.00) through the date of the liquidation of Claimant's interest in the Dean Witter High Yield Securities Investment.

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. The Respondent Dean Witter Reynolds, Inc. be and hereby is liable and shall pay to the Claimant the sum of Eleven Hundred Dollars (\$1100.00)
2. Each party shall bear their respective costs including attorney's fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

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\$100.00 filing fee
2 sessions X \$400.00 = \$800.00 minus Hearing Session
Deposit of \$400.00 = net \$400.00 due.

The Claimant be and hereby is liable and shall pay to the NASD the sum of \$400.00 to represent forum fees.

Fees are payable to the National Association of Securities Dealers, Inc.

Arbitrators' Signature
Name

Public/Industry

John P. DeLuca

Public

Vincent J. Muffoletto

Public


Ezra Cornett

Industry

Date of Decision: August 11, 1993

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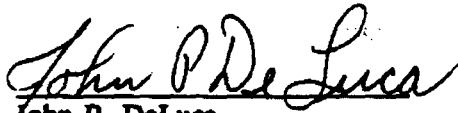
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