

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Dr. John Toscano and
Mary-Ellen Toscano, individually, Jointly, and
as custodians and trustees
Toscano, Defined Benefit Pension Plan
John, Mary Toscano C/F Julie & Lisa Toscano
John P. Toscano O.D. Profit Sharing Plan

vs.

Award No.
94-00720

Name of Respondents

Dean Witter Reynolds Inc.
Rick F. Ryan
Louis M. Ricciardi

REPRESENTATION

For Claimants, Dr. John Toscano and Mary-Ellen Toscano, individually, jointly, and as custodians and trustees, Toscano, Defined Benefit Pension Plan, John, Mary Toscano C/F Julie & Lisa Toscano and John P. Toscano O.D. Profit Sharing Plan ("Claimants"), Joseph P. Carmichael, Esq., Attorney-at-Law, located in Salem, Massachusetts.

For Respondents, Dean Witter Reynolds, Inc. ("DWR") and Rich F. Ryan ("Ryan") ("collectively, Respondents"), Richelle S. Kennedy, Esq., from the firm of Bingham Dana & Gould, located in Boston, Massachusetts.

For Respondent, Louis M. Ricciardi ("Ricciardi"), Irwin B. Grant Schwartz, Esq., from the firm of Grant Schwartz & Brown, located in Boston, Massachusetts.

CASE INFORMATION

Statement of Claim was filed on February 25, 1994.

Claimants' Submission Agreement were signed on February 17, 1994 and May 17, 1994.

Claimants' Opposition to Respondents' Motion to Dismiss was filed on June 16, 1994.

Joint Statement of Answer and Motion to Dismiss were filed by Respondents, DWR and Ryan on June 9, 1994.

Dean Witter Reynolds' Submission Agreement was signed on July 5, 1994.

Ryan's Submission Agreement was signed on June 17, 1994.

Statement of Answer and Motion to Dismiss was filed by Respondent, Ricciardi on June 9, 1994.

Ricciardi's Submission Agreement was signed on June 1, 1994.

HEARING INFORMATION

Hearing Dates/Sessions: June 5, 1995 - 2 sessions
 June 6, 1995 - 2 sessions
 October 18, 1995 - 2 sessions
 October 19, 1995 - 2 sessions
 December 13, 1995 - 2 sessions

Hearing Location: NASD's offices located at 260 Franklin Street, Boston, Massachusetts.

CASE SUMMARY

Claimants allege that Dr. John Toscano was an optometrist who planned to retire at age 52 in 1993 for health reasons. Claimants also allege that this information was conveyed to Mr. Ricciardi. Claimants further allege that they explained to Mr. Ricciardi that their investment objectives were to provide for Dr. Toscano's retirement and the college education of his two daughters, the elder of the two would begin college in 1990. Claimants further allege that they were risk-adverse and wanted preservation of their principal investments. Claimants state that four accounts were established, two IRA's for Dr. Toscano and Mrs. Toscano, a pension plan and a profit sharing account.

Claimants contend that Ricciardi recommended that they purchase Compass II Variable Annuity, Balcor Limited Partnership, Northbrook Variable Annuity, Columbia Lease Limited Partnership, Thomson McKinnon Individual Trust US Government Federal District, National Lease Limited Partnership, DWR "STRIP" bonds and KRUPP Sash Plus III. Claimants also contend that in most cases, Ricciardi failed to provide Claimants with prospectuses, failed to disclose the risks, made unsuitable recommendations for the pension plan, keogh and college education accounts, purchased securities and placed them in the wrong accounts. Claimants further contend that Ricciardi promised returns of 6% and 10 to 12% in the pension plan and keogh accounts but engaged in trading that did not provide such returns. Claimants also contend that Ricciardi churned the accounts for the sole purpose of obtaining commissions. Claimants maintain that DWR and Ryan failed to supervise Ricciardi. Claimants further contend that the statements misrepresented the true value of the securities and that Ricciardi continued to misrepresent the value of the securities when they asked for explanations.

Claimants contend that Ricciardi incorrectly recorded Dr. Toscano's social security number instead of Dr. Toscano's employer's social security number and listed Dr. Toscano as owner and Mrs. Toscano as beneficiary in connection with the purchases of Compass II Variable Annuity.

Respondents DWR and Ryan, deny all allegations of wrongdoing and deny liability. Said Respondents contend that Dr. and Mrs. Toscano are educated professionals and knowledgeable investors who present this claim that Respondents tricked them for more than eight years that the investments they purchased were risk-free and guaranteed. Respondents also contend that most of the claims are time-barred and were purchased prior to the time Claimants opened their account at DWR.

Respondents state that Dr. Toscano is a 53 year old optometrist with an active practice, Mrs. Toscano

is a school principal and in 1988, they had a combined income of \$110,00 and a net worth of approximately \$400,00. Respondents also state that during the time Claimants account was at Thomson McKinnon, 1984 through 1988, when Ricciardi discussed investment objectives with Dr. and Mr. Toscano, they expressed a vague hope of early retirement but nothing was said about health problems. Respondents further state that Claimants had many discussions with Ricciardi and the nature of their limited partnership was discussed and Claimants were aware that it was difficult to determine their "equity" value in these investments. Respondents also state that Ricciardi periodically sent Dr. Toscano summaries at Dr. Toscano's request.

Respondents state that Claimants became DWR's client in 1988 and that Ryan become Ricciardi's supervisor in 1991 to the time this claim was filed. Respondent also state that the investments complained of were purchased at DWR prior to Ryan's supervision of Ricciardi.

RELIEF REQUESTED

Claimants request an award individually as to investments made by Ricciardi during his employment with Thomson McKinnon, and jointly and severally with DWR and Ryan as to investments made at DWR in actual losses and lost opportunity totalling \$247,119.19; an order directing DWR to correct the improper registration of investments; punitive damages; costs, expenses and disbursements including reasonable attorney's fees; and for such relief as the panel deems just and proper.

Respondents request that all claims be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies and have agreed to receive conformed copies of the Award while the original remains on file with the NASD.

The arbitration panel previously consisted of Tom L. Peterson, Esq., Richard A. Cournoyer and James D. Kaufman. At the additional hearing sessions scheduled for October 18 and 19, 1995, Arbitrator Peterson was unable to appear due to a scheduling conflict. All parties were advised by the remaining panel members about their options which were:

1. Adjourn the October 18, 1995 hearing and reconvene on October 19, 1995, with the full panel;
or
2. Proceed with the hearing with the two panel members who had appeared.

Both parties decided to proceed with the remaining panel members even though, the arbitrators stated that their preference was to adjourn the hearing as neither of them had previous Chairperson experience.

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. All claims asserted by Claimants against Respondents are denied in their entirety.
2. It appears at the hearing that the registration of investments was corrected by Respondents. To the extent that this has not been done, Respondent DWR is directed to do so within thirty days from the dated of the award.

FORUM FEES

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

Non-refundable Filing Fee: \$200.00

Hearing Session Fees: \$7,500.00 (10 sessions @ \$750.00 per session)

Total Fees: \$7,700.00

1. Claimants are assessed \$200.00 non-refundable filing fee and \$2,500.00 in forum fees. Claimants previously paid \$950.00 and owe a balance of \$1,750.00.
2. Respondents DWR and Ryan are jointly and severally assessed \$2,500.00. DWR is further assessed \$750.00 for the postponement of the hearings that were scheduled for May 2 and 3, 1995, which has been paid.
3. Respondent Ricciardi is assessed \$2,500.00 in forum fees.

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

ARBITRATION PANEL

James D. Kaufman	-	Industry Chairperson
Richard A. Cournoyer	-	Public Panelist

Concurring Arbitrator's Signature


Richard A. Cournoyer

NASD's Date of Decision: February 15, 1996

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James D. Kaufman
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Concurring Arbitrator's Signature


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