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AWARD

NASD Regulation, Inc. Office of Dispute Resolution

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Securities Dealers

In the Matter of the Arbitration Between

100%

Daniel J. Schmitt,

Claimant,

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v.

No. 95-04335

*Dean Witter Reynolds, Inc., and
Daniel M. Prescott,
Respondents.

REPRESENTATION OF PARTIES

Daniel J. Schmitt ("Claimant") was represented by Charles Seigel, Esq., of Seigel & Wolff, P.C., St. Louis, Missouri.

Dean Witter Reynolds, Inc. ("DWR"), and Daniel M. Prescott ("Prescott") (or collectively referred to as "Respondents") were represented by Harry O. Moline, Esq., and Sherri C. Strand, Esq., of Moline & Shostak, L.L.C., St. Louis, Missouri.

CASE INFORMATION

The Statement of Claim was filed on or about Submission Agreement of Claimant was signed on

Respondents' joint Answer to the Statement of Claim was filed on or about Respondent DWR's Submission Agreement was signed on November 30, 1995 by David Restaino. Respondent Prescott's Submission Agreement was signed on November 30, 1995

HEARING INFORMATION

The hearing was held on October 8 and 9, 1996 for two (2) sessions each day, and October 10, 1996 for one (1) session in St. Louis, Missouri for a total of five (5) sessions.

CASE SUMMARY

Claimant alleged that Respondents: Committed fraud by concealing Prescott's license termination; breached their fiduciary duty by failing to carry out Claimant's requested sale of President Casino stock and Quadrax stock and by failing to inform Claimant the Prescott's brokerage license had been terminated; and were-negligent and breached their duty of due care by providing investment advice to the Claimant without a valid brokerage license.

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Respondents denied each and every allegation of liability alleged in Claimant's ~~State,ment~~ of Claim and averred that the Statement of Claim failed to state a cause of action upon which relief could be granted. Respondents also asserted the following additional legal defenses: Claimant had ratified any allegedly improper acts by his own conduct; Claimant's claims are barred by the doctrine of estoppel; Claimant failed to mitigate damages; and Claimant's claims are barred and/or reduced by the applicable statutes of limitation, as well as the doctrines of laches and unclean hands.

RELIEF REQUESTED

Claimant requested a joint and several award against the Respondents for: Actual damages in the amount of \$38,000, plus interest and commissions; punitive damages; costs; and such further relief deemed just and proper.

Respondents requested that each of Claimant's claims be denied in its entirety and that no damages be awarded therefor.

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 original(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

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:

Claimant's claims are, and each of them, denied with prejudice.

Each party shall bear its own costs and expenses, including attorneys' fees, except as set forth below.

FORUM FEE S

Forum fees are calculated at the rate of \$400 per hearing session. There were five (5) sessions x \$400 = \$2,000 in forum fees. Pursuant to §10332(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to § 10332(c) of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$120 and shall

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retain as forum fees the hearing session deposit in the amount of \$400 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant.

Pursuant to § 10333 of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable member surcharge in the amount of \$200 previously paid by DWR.

Additional forum fees in the amount of \$666.67 are assessed against DWR.

Additional forum fees in the amount of \$666.67 are assessed against Prescott.

Additional forum fees in the amount of \$266.66 (\$2,000 less \$1,333.34 assessed against Respondents and less \$400 hearing session deposit) are assessed against the Claimant.

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Dated:

Herbert Lasky

/s/

October 22, 1996

Herbert Lasky

Public Arbitrator, Presiding Chair

Robert G. Haddenhorst, Sr.

/s/

November 7, 1996

Robert G. Haddenhorst, Sr.

Public Arbitrator

Theresa A. Secrest

/s/

October 22, 1996

Theresa A. Secrest

Industry Arbitrator