

NASD REGULATION AWARD

In the Matter of the Arbitration Between

Name of Claimants

Robert Y. & Julie H. Kim

96-00133

Name of Respondents

Dean Witter Reynolds Inc.
Robert Denning

REPRESENTATION

For Claimants, Robert Y. and Julie H. Kim ("claimants"), appeared L. Vastine Stabler, Jr., Esq. of Birmingham, Alabama and C. Henry Marston, Esq. of Walston, Wells, Anderson & Bains, LLP, of Birmingham, Alabama.

For Respondents, Dean Witter Reynolds Inc. ("Dean Witter") and Robert Denning ("Denning"), appeared W. Percy Badham III, Esq. and Stephen C. Jackson, Esq. of Maynard, Cooper & Gale, P.C., located in Birmingham, Alabama.

CASE INFORMATION

The Statement of Claim was filed on January 9, 1996. Claimant's Submission Agreement was signed on January 9, 1996.

A Joint Statement of Answer was filed by Respondents on March 8, 1996. Neither respondent filed a Submission Agreement as required under Rule 10314(b) of the Code of Arbitration Procedure.

HEARING INFORMATION

Pre-hearing Conference:	February 25, 1997	1 Session
Hearing Dates/Sessions:	March 4, 1997	2 Sessions
	March 5, 1997	2 Sessions
	March 6, 1997	2 Sessions

Hearing Location: Grand Hyatt Hotel located in Atlanta, Ga.

CASE SUMMARY

Claimants stated that they were both born and educated in South Korea and emigrated to the United States in 1969 so that English is a second language for them. The claimants contended that they lived frugally and over the years accumulated savings from their earnings, and by 1992 had saved approximately \$450,000 available for investment, virtually all of which was invested in savings accounts and certificates of deposit. Claimant alleged that neither of them had received any formal training in investments and

that before they came to Dean Witter they had very little experience in investing.

Claimants alleged that they opened accounts at Dean Witter in 1992 and at that time they met with Denning, their account executive, who was recommended by claimant's friend, and discussed their investment objectives with him and expressed an interest in increasing their yield, but told him they wanted safety in their investments. Claimants argued that at the meeting Denning proposed an investment plan with forty-five percent of the portfolio in long term equity investments, twenty-five percent in "trading assets" and thirty percent in tax free bonds.

The claimants alleged that the first investments with Denning consisted primarily of bonds, government securities and a purchase of HealthSound Rehab common stock, but in June 1993 and again in December 1993, Denning supposedly induced Julie Kim to sign stock option forms. Claimants argued that at the time Denning obtained these forms, neither of them knew anything about stock options and Denning did not explain to them, in terms they could understand, what stock options are about or the risks involved in trading options or the high commissions charged on option trades. Claimants further argued that the second option form changed their investment priorities from investment hedge and aggressive income to aggressive income and speculation, and authorized uncovered option writing, terms claimants claimed they did not understand. The claimants alleged that Denning knew that stock options were an unsuitable investment for them and should not have recommended options to them or traded options in their account.

On December 10, 1993, claimants contended Denning began trading in stock options in their account and put in numerous trades for put and call options and short term buying and selling of stocks, generating commissions for himself and exposing claimant to risk of loss. Claimants argued that their largest loss resulted from Denning's sale of 200 Storage Technology ("STK") put options. According to claimants, this obligated them, on exercise, to buy at \$40 per share 20,000 shares of a speculative stock, an aggregate investment of \$800,000, which was far in excess of the market value of their account at the time the options were sold. Claimants alleged that when the price of STK fell, Denning allowed the options to be exercised, with the result that STK was sold to claimants at a price far in excess of its market price and at margin. According to claimants their account was concentrated in a speculative stock with an aggregate purchase price exceeding the equity in their account.

Claimants asserted that Denning engaged in conduct to conceal the losses in their account, conduct which included allowing the STK options to be exercised rather than buying the options back at a loss and repeatedly assuring them that all was well. Claimants further alleged that when the account was on margin call, he sold a January 1997 call on the 25,000 shares of STK exercisable at 30 without explaining to claimants the effect of the transaction or the alternatives.

Claimants asserted that the concealing of losses was joined in and continued by Dean Witter. Claimants further asserted that the alleged hiding of losses denied them the opportunity to mitigate their losses since they did not know how bad the situation was and resulted in their having to pay substantial income taxes on the cash received on some option trades notwithstanding the substantial reduction in the value of their holdings, because the losses when recognized in the later year could not be "carried back" to offset the cash received on those options trades.

Claimants contended Denning failed to follow their instructions to sell the STK at \$29.50 which he had told Julie Kim was the break even point on the stock, and that other transactions in their accounts were not properly authorized. Claimants further contended that they sustained losses on other unsuitable investments in the account by Denning, including Continental Medical Systems.

Respondents alleged that claimants are educated, successful professionals, Dr. Kim is a radiation

oncologist and Mrs. Kim is a successful real estate agent, who sold \$9 million dollars worth of real estate in 1996, \$7 million in 1994 and \$5 million in 1993.

Respondents further alleged that claimants had investment experience in real estate investments and owned three rental homes in California prior to opening their Dean Witter account. Respondents contended that Mrs. Kim opened an account at Raymond James prior to opening a Dean Witter account in 1992. In opening her account at Raymond James, Mrs. Kim executed an Option Agreement stating that she was suitable for option trading and was capable of understanding option trading.

The claimant's relationship with Dean Witter began in early 1992. According to respondents during their initial meeting, Denning asked Mrs. Kim about her investment objectives, which she explained as tax free investments and tax shelters. Denning allegedly reviewed with Mrs. Kim various investment vehicles designed to reach these objectives, and after a subsequent meeting with both claimants, they invested on April 12, 1992 just over \$400,000 in a tax free money market fund.

Respondents contended that in June 1993, the Kims investment objectives changed. Respondents further contended that the Kims wanted more return on their investment. Mrs. Kim supposedly told Denning that she wanted to invest in exactly the same fashion as Mr. Koh, one of the two Denning clients who had referred the Kims to Denning. Respondents argued that Denning explained Mr. Koh's strategy to the Kims and the risks involved in such a strategy. According to respondents, Mrs. Kim understood these risks fully, as well as the intricacies of trading on margin, which Denning also explained in detail. Shortly after this June 1993 meeting, Mrs. Kim allegedly authorized Denning to undertake this new strategy.

Respondents denied that the account was churned or that the account was handled improperly.

Until early 1995, respondents stated the strategy proved successful. The Kims realized earnings in 1993 of approximately \$41,059 and in 1994 had gains in excess of \$220,000.

Beginning in June 1994, the Kims held a position of 25,000 shares in Storage Technology. The Kim held this position for approximately eight months, with the price of STK fluctuating during that time period. There were several occasions during this eight month period that the Kims could have sold their position for a profit. Respondents maintained that rather than sell, the Kims insisted on holding the stock pending the release on January 24, 1995 of the company's earning information. The earnings report released that date fell short of the market's expectations and the stock price dropped, ultimately resulting in a loss when the claimants sold their position.

Respondents alleged that all trades in the claimant's account were discussed, approved and authorized by the Kims, and that all of the trading activity in the Kims' account was consistent with their investment objectives.

Respondents alleged that the claimants losses were the result of their own decision to hold their position in STK.

RELIEF REQUESTED

Claimants requested compensatory damages of \$525,504, attorneys' fees of \$350,336 and punitive damages of \$2,625,000.

Respondents requested the Panel to find no damages and to return a decision in their favor.

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.

The arbitrators have made the following ruling concerning Respondents Dean Witter Reynolds, Inc. and Robert Denning who failed to submit a Submission Agreement in this matter:

1. Pursuant to Rule 10101 of the Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over the entire controversy.
2. The panel found that Dean Witter Reynolds, Inc. was a member of the NASD at the time this controversy arose and consequently found jurisdiction over Dean Witter Reynolds, Inc.
3. The panel found that Robert Denning was an associated person of a member of the NASD at the time this controversy arose and therefore, the panel found personal jurisdiction over Robert Denning pursuant Rule 10301 of the Code.
4. In view of (2) and (3) above, the panel found that Dean Witter Reynolds, Inc. and Robert Denning were required to file with the NASD a properly executed Submission Agreement pursuant to Rule 10314(b) of the NASD Code of Arbitration Procedure.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Dean Witter Reynolds, Inc. be and hereby is liable to and shall pay claimants the sum of \$133,000 in compensatory damages.
2. Respondent Denning be and hereby is liable to and shall pay claimants the sum of \$67,000 in compensatory damages.
3. Claimants' request for attorneys' fees, punitive damages and pre-judgment interest is specifically denied.
4. Each party shall bear it's own costs.
5. All other claims be and hereby are denied.

FORUM FEES

The arbitrators have determined that NASD Regulation shall retain the \$200.00 non-refundable filing fee paid by claimant and have assessed the following forum fees pursuant to Rule 10332 of the Code of Arbitration Procedure:

1 Pre-hearing conference x \$300.00	\$ 300.00
6 Hearing Sessions X \$750.00	\$4,500.00
Total forum fees	\$4,800.00

The arbitrators have determined that the Claimants bear the entire cost of arbitration. Therefore claimants be and hereby are liable for \$4,800.00 representing the total amount of forum fees less the \$750.00 previously deposited as a hearing session deposit, net \$4,050.00 due.

Fees are payable to NASD Regulation, Inc.

ARBITRATORS' SIGNATURES



A. Keith Logue, Esq.
Public Chairperson

Date of Decision 5/7/97

Harriet H. Harris, Esq.
Public Panelist

P. Parks Duncan
Industry Panelist

ARBITRATORS' SIGNATURES

A. Keith Logan, Esq.
Public Chairperson

Harriet H. Harris, Esq.
Harriet H. Harris, Esq.
Public Panelist

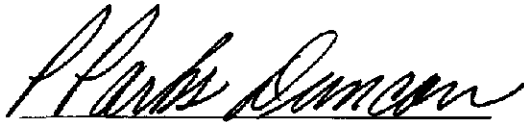
Date of Decision 5/7/97

P. Parks Duncan
Industry Panelist

ARBITRATORS' SIGNATURES

A. Keith Logue, Esq.
Public Chairperson

Harriet H. Harris, Esq.
Public Panelist

A handwritten signature in cursive script, appearing to read "P. Parks Duncan", written over a horizontal line.

P. Parks Duncan
Industry Panelist

Date of Decision 5/7/97