

AWARD

NASD Regulation, Inc.

In the matter of the Arbitration Between

Name of Claimant(s)

William W. Kidwiler

Arbitration
No. 96-00347

Name of Respondent(s)

Everen Securities, Inc.
Kemper Securities, Inc.
William L. Taylor

REPRESENTATION

For Claimant: Roger D. Mellem, Esq., Foster Pepper & Shefelman,
Seattle, Washington

For Respondents: Fredrick D. Huebner, Esq., Cable, Langenbach,
Kinerk, Bauer & Leshner, LLP, Seattle, Washington

CASE INFORMATION

Statement of Claim filed: January 22, 1996

Claimant's Arbitration Brief filed: February 27, 1997

Claimant's Submission Agreement signed: January 19, 1996

Joint Statement of Answer filed by Respondents: May 7, 1996

Respondents' Hearing Brief filed: February 27, 1997

Respondents did not file properly executed Uniform Submission
Agreements. However, they appeared at the hearing and are subject

to NASD Regulation, Inc. (NASDR) jurisdiction in accordance with Section 10301 of the NASDR Code of Arbitration Procedure.

HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s):

December 9, 1996 (one session)

January 8, 1997 (one session)

January 28, 1997 (one session)

February 6, 1997 (one session)

Hearing Date(s)/Session(s): March 5, 1997 (two sessions)

March 6, 1997 (two sessions)

March 7, 1997 (two sessions)

Hearing Location: Seattle, Washington

CASE SUMMARY

Claimant alleged that he is an elderly, unsophisticated man and alleged that Respondent William L. Taylor mismanaged Claimant's account by convincing Claimant to place a high percentage of his account in a speculative biotechnology stock, Cholestech, and to do so on margin. Claimant further alleged that Mr. Taylor sold Cholestech to Mr. Kidwiler in the winter of 1993 making misrepresentations to him and further alleged that Mr. Taylor never explained to Claimant the risks involved in margin trading, the risks involved in placing such a high portion of his net worth into one stock or, that the proposed speculative investment in Cholestech was unsuitable for a person of Claimant's age, income, net worth and investment objectives. Claimant further alleged that Respondents' conduct violated the Washington State Securities Act and entitles Claimant to rescind his winter-of-1993 purchases of Cholestech and to recover over \$250,000.00 from the Respondents, jointly and severally. Claimant also asserted claims for breach of fiduciary duty and negligence.

Respondents alleged that Claimant has given the arbitration panel a selective, and inaccurate portrait of the handling of his brokerage account by Respondents. Respondents denied any liability to Claimant and alleged that Claimant's losses, if any, are the result of his own overspending of his inherited wealth and of his

own voluntary decision to purchase a promising biotech stock he had previously made money on, buy a new house, and replenish his dwindling funds. Respondents further alleged that there was no violation of the Washington Securities Act and asserted that Claimant was aware of and warned of the risks. Respondents further alleged that Claimant must take personal responsibility for his own conduct.

RELIEF REQUESTED

Claimant requested an award of over \$250,000.00 consisting of compensatory damages, punitive damages, attorney fees and costs.

Respondents requested dismissal of Claimant's Claim with prejudice, and requested costs and attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

At hearing the panel was advised that Claimant withdrew his claim for violation of Washington's Consumer Protection Act.

The parties have agreed that the Award in this matter may be executed in either 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 NASDR.

AWARD

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

1. Respondents are jointly and severally liable for and shall pay to Claimant the sum of \$84,661.04, in compensatory damages.
2. Respondents are jointly and severally liable for and shall pay to Claimant the sum of \$45,000.00, in attorney's fees pursuant to the Washington State Securities Act, RCW Chapter 21.20.
3. Claimant's claim for punitive damages is denied.

4. The parties shall each bear their respective costs of this proceeding.

FORUM FEES

Pursuant to Section 10332(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASDR shall refund the \$750.00 hearing session deposit previously deposited by the Claimant. Forum fees are assessed against Respondents, jointly and severally, in the amount of \$5,700.00, calculated as follows: Four pre-hearing sessions times \$300.00 plus six hearing sessions times \$750.00.

Fees are payable to NASD Regulation, Inc.

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
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Robert M. Stein, Esq.

Public Arbitrator

Elwood C. Avery

Public Arbitrator

Thomas D. Cochran, Esq.

Industry Arbitrator

Concurring Arbitrators' Signatures



Robert M. Stein, Esq.

Elwood C. Avery

Thomas D. Cochran, Esq.

Date of Decision: 4-15-97

Date 05/06/97

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Public Arbitrator

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Thomas D. Cochran, Esq.

Industry Arbitrator

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Date of Decision: _____

Date Served: 05/06/97

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Robert M. Stein, Esq.	Public Arbitrator
Elwood C. Avery	Public Arbitrator
Thomas D. Cochran, Esq.	Industry Arbitrator

Concurring Arbitrators' Signatures

Robert M. Stein, Esq.

Elwood C. Avery

Thomas D. Cochran 4/14/97
Thomas D. Cochran, Esq.

Date of Decision: _____

Date Served: 05/07/97