

AWARD

NASD Regulation, Inc.
In the Matter of the Arbitration Between

Alfred Z. Kales,

Claimant,

v.

No. 96-01695

Dean Witter Reynolds, Inc., and
Lawrence D. Bain,

Respondents.

REPRESENTATION OF PARTIES

Claimant Alfred Z. Kales ("Claimant") was represented by Anthony V. Trogan, Esq. of Weisman, Trogan, Young & Schloss, P.C. located in Bingham Farms, Michigan.

Respondent Dean Witter Reynolds, Inc. ("Dean Witter") was represented by Raymond W. Henney, Esq. of Honigman, Miller, Schwartz and Cohn located in Detroit, Michigan.

Respondent Lawrence D. Bain ("Bain") was represented by Christopher J. Barber, Esq. and Nancy L. Hendrickson, Esq. of Ungaretti & Harris located in Chicago, Illinois.

CASE INFORMATION

The Statement of Claim was filed on or about April 18, 1996.

Claimant's Submission Agreement was signed on March 21, 1996.

The Statement of Answer of Dean Witter was filed on or about July 8, 1996.

The Statement of Answer of Bain was filed on or about July 11, 1996.

HEARING INFORMATION

The telephonic pre-hearing conferences were held on November 3, 1997 for one (1) session and July 20, 1998 for one (1) session. The hearing was held on September 10, 1998 for one (1) session; December 15, 1998 for two (2) sessions; December 16, 1998 for two (2) sessions; December 17, 1998 for two (2) sessions; and December 18, 1998 for one (1) session. The hearing

location was Southfield, Michigan.

CASE SUMMARY

This claim arose out of Claimant's securities account held at Dean Witter. Respondent Bain was the broker assigned to Claimant's account.

In his Statement of Claim, Claimant alleged that Respondents Dean Witter and Bain (collectively referred to as "Respondents") recommended the purchase of \$100,000 worth of inappropriate and unsuitable equity securities without consideration to Claimant's investment goals or objectives. Claimant also contended that Respondents engaged in churning of his bond portfolio generating losses for Claimant in excess of \$32,000, while generating total commissions for Respondents in excess of \$66,000. Claimant further asserted that Respondents made material misrepresentations regarding the safety and security of the investments at issue. Claimant maintained that the above mentioned conduct was in violation of both Federal and State securities laws, as well as the common law.

Respondents denied all liability to Claimant in their respective Statements of Answer. Respondents alleged that Claimant was a sophisticated businessman who understood the risks of all securities purchased. Respondents also asserted that the trading in the account was not excessive given Claimant's personal and financial situation as well as his investment objectives. Respondents further contended that Claimant received monthly statements, annual summaries and confirmations for every transaction, but never raised any objections. Respondents maintained that Claimant had at least two other brokerage accounts outside Dean Witter which substantially paralleled the activity and investments in the Dean Witter account. Respondents asserted that the Claimant knowingly desired the trading and investments at issue, and controlled his own account at all times.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested an award of the following: compensatory damages in the amount of \$150,000; rescission of all fraudulent transactions; an additional \$150,000; interest; exemplary damages; such other just and equitable relief as deemed necessary and proper; costs and expenses of this litigation, including reasonable attorney fees; and treble damages pursuant to RICO.

Respondents requested that the Statement of Claim be dismissed in its entirety with prejudice, as well as an award of their costs, expenses and attorney fees. Respondent Bain also requested that this matter be expunged from his CRD record.

OTHER ISSUES CONSIDERED & DECIDED

Respondents did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but are required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code"), and having answered the Statement of Claim and appeared and testified at the hearing, are bound by the determination of the arbitration panel on all issues submitted.

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:

- (1) That the Statement of Claim is hereby dismissed in its entirety with prejudice;
- (2) That Respondent Bain's request for an order of expungment is denied;
- (3) That other than forum fees which are specified below, the parties shall each bear their own costs, attorney fees and expenses incurred in this matter; and
- (4) That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were eight (8) hearing sessions x \$750 = \$6,000 in forum fees. There were two (2) pre-hearing conferences x \$300 = \$600 in forum fees. Total forum fees = \$6,600. Pursuant to Rule 10332(b) of the Code, 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 Rule 10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$200 and, excluding postponement

fees specified below, shall refund other funds previously deposited by the Claimant.

Pursuant to Rule 10332(c) of the Code, Respondent Bain is liable for and shall pay all forum fees in the amount of \$6,600.

OTHER COSTS

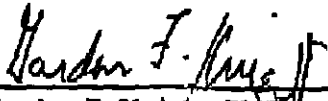
Pursuant to Rule 10333 of the Code, Respondent Dean Witter has paid to NASD Regulation, Inc. the \$350 member surcharge previously invoiced.

Pursuant to Rule 10319 of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain postponement fees in the amount of \$750 relating to Claimant's Motion for Adjournment.

Pursuant to Rule 10319(c) of the Code, Respondent Bain is liable for and shall pay postponement fees in the amount of \$750 relating to his Motion for Adjournment.

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

Concurring Arbitrators' Signatures:



Gordon F. Knight, Ph.D.
Chairperson
Public Arbitrator

1/11/99
Dated:

George P. Doom
Panelist
Public Arbitrator

Dated:

Gary C. Peters, Esq.
Panelist
Industry Arbitrator

Dated:

For NASD Regulation use only:
Date award served on parties: _____

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11 JAN 99
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