

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

C.D. Roberts

96-02233

Name of Respondents

Dean Witter Reynolds, Inc.  
Byron Boothe

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REPRESENTATION

For Claimant C.D. Roberts ("Claimant") appeared Gary C. Johnson, Esq., located in Pikeville, Kentucky.

For Respondents Dean Witter Reynolds, Inc. and Byron Boothe ("Respondents") appeared James Yellen, Esq., in-house counsel at Respondent Dean Witter Reynolds, Inc.

CASE INFORMATION

The Statement of Claim was filed on May 24, 1996.  
Claimant's Submission Agreement was signed on May 1, 1996.

Respondents filed a Joint Statement of Answer on September 11, 1996.  
Respondent Dean Witter filed a Submission Agreement which was executed on July 22, 1996.  
Respondent Boothe filed a Submission Agreement which was executed on July 31, 1996.

HEARING INFORMATION

Hearing Dates/Sessions:	January 22, 1997	-	2 Sessions
	January 23, 1997	-	2 Sessions

The hearing was held at the Marriott Hotel, 1903 Embassy Square Boulevard located in Louisville, Kentucky 40299.

CASE SUMMARY

Claimant alleged that in March of 1995, Respondent Boothe made an unauthorized purchase of Interdigital Communications at \$12.00 per share for a total purchase price of \$60,502.00. Claimant objected to this purchase and allegedly asked respondent Boothe to remove the stock from his account. Respondent Boothe allegedly told Claimant that he had cancelled the buy but later stated that he sold the position at \$13.00 per share instead of cancelling the buy. Claimant alleged that the stock was actually sold on February 20, 1995 at 7 5/8 for a total loss of \$22,881.00.

Claimant alleged that a pattern of unauthorized trading ensued throughout 1995 with respondent Boothe purchasing shares of Advanced Micro Devices (AMD); Motorola (MOT); International Lottery (ILI), Best Buy Company, Inc. (BBY) and Logic Corporation (LSI) without Claimant's consent. Claimant alleged that after receiving a confirmation for each buy order he contacted respondent Boothe and asked him to remove the stock from his account.

Claimant further alleged that in July of 1995, claimant asked respondent Boothe to purchase 2,000 shares of Clorox (CLX). Claimant alleged that he confirmed the purchase of the CLX stock for a total cost of \$123,452.00. Approximately one week after respondent Boothe allegedly purchased the CLX stock for Claimant's account, respondent called Claimant and told him to sell 20 calls for January at 3 3/4 and Roberts would receive \$7,262.00. Claimant alleged that he never received the stock and in January, 1996 the 2,000 shares were called out. Claimant alleged that as a result he had to cover and buy the stock for \$165,202.00, and on February 15, 1996, received a debit memo for the dividend of \$1,060.00, for a total loss of \$36,289.00.

Claimant also alleged that in May of 1995 he asked respondent Boothe to purchase 500 Krugerrands for \$200,758.00. One week later Claimant asked Respondent Boothe to cancel the order because there was a 6% sales tax. Respondent Boothe advised Claimant that the order had been cancelled and that Claimant had no position in Gold. However, Claimant's account was credited with a loss of \$12,479.00.

In August, 1995 Claimant owned 4000 shares preferred B of Nabisco RJR Depository Shares which Nabisco offered to trade the 4000 shares for a 10% debenture of preferred B. Claimant alleged that Respondent Boothe was informed to do the trade but the deadline passed and the trade was never made. The failure to exchange the stock to the debenture cost Claimant \$8,000.00.

Respondents denied all allegations of wrongdoing asserted in the Sstatement of Claim. Respondents maintained that Claimant is a sophisticated investor who has a long history of speculative investments in the stock markets. Respondents denied that unauthorized trades occurred in the claimants' account and maintained that claimant specifically approved and as aware of ever trade about which he now complains.

Respondents maintained that claimant's claim is one of fraud alleged by a claimant who does not want to accept responsibility for losing trades. Respondents maintained that claimant's claims are barred by the doctrines of waiver, estoppel and ratification. Respondents also maintained that claimant's claim for punitive damages is also barred as a matter of law.

#### RELIEF REQUESTED

Claimant requested damages as follows:

STOCK	LOSS
Interdigital Communication	\$ 22,881.00
Advanced Micra Devices	\$192,410.00
Clorox	\$ 36,289.00
Motorola	\$ 80,773.00
International Lottery	\$ 32,032.00
Best Buy Company, Inc.	\$ 62,235.00
Logic Corporation	\$ 49,516.00
Krugerrands	\$ 12,479.00
Nabisco	\$ 8,000.00
Interest Charged to Margin Account	\$ 88,817.00
Total Damages	\$585,432.00

Punitive Damages	\$400,000.00
Total	\$985,432.00

Respondents requested that the claims be denied in full and that they be awarded costs in defense of this proceeding.

#### 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.

#### 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. Respondents be and hereby are jointly and severally liable and shall pay to Claimant the sum of \$69,314.57.
2. Respondents be and hereby are jointly and severally liable and shall pay to Claimant interest at the rate of 6% per annum from the date of decision until the award is paid in full.
3. Each party shall bear their respective costs including attorneys' fees.
4. All claims for punitive damages be and hereby are denied.

#### FORUM FEES

Pursuant to Rule 10332 (formerly Section 43c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

4 hearing sessions x \$1000.00 = \$4,000.00

The total amount of forum fees assessed for this arbitration is \$4,000.00. The panel has assessed one-half of the fees against the claimant and one-half jointly and severally against the respondents.

Claimant is liable and shall pay to NASD Regulation, Inc. the sum of \$2,000.00. However, claimant previously deposited \$1,000.00 with NASD Regulation. As a result, the amount due from claimant is \$1,000.00.

Respondents are jointly and severally liable and shall pay to NASD Regulation, Inc. the sum of \$2,000.00.

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

ARBITRATOR'S SIGNATURE

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Phyllis E. Florman, Esq.,  
Public Arbitrator - Chairperson

  
Carolyn K. Balleisen, Esq.  
Public Arbitrator

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Elijah T. Kirk  
Industry Arbitrator

Date of Decision: March 5, 1997

ARBITRATOR'S SIGNATURE

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Public Arbitrator - Chairperson

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Carolyn K. Balleisen, Esq.  
Public Arbitrator

*Elijah T. Kirk*

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Industry Arbitrator

Date of Decision: March 5, 1997

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