

NASD REGULATION AWARD

National Association of Securities Dealers Regulation, Inc.

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In the Matter of the Arbitration Between

Name of Claimant

John H. Rasnick

96-02241

Name of Respondents

Dean Witter Reynolds Inc.  
Byron Boothe

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**REPRESENTATION**

For Claimant, John H. Rasnick ("Claimant"), appeared Gary C. Johnson, Esq., located in Pikeville, Kentucky.

For Respondents, Dean Witter Reynolds Inc. ("DWR") and Byron Boothe ("Boothe") appeared Annemarie P. McAvoy, Esq., in-house counsel.

**CASE INFORMATION**

The Statement of Claim was filed on June 6, 1996. Claimant's Submission Agreement was signed on May 1, 1996.

Respondents' Joint Statement of Answer was filed on October 11, 1996. Neither respondent executed a Submission Agreement as required by Rule 10314(b) of the Code of Arbitration Procedure.

**HEARING INFORMATION**

Hearing Date/Sessions: February 25, 1997 - Two Sessions

The hearing was conducted at the Hyatt Hotel in Louisville, Kentucky.

**CASE SUMMARY**

Claimant alleged that he made investments with DWR through its agent Boothe. Claimant further alleged that in November and December 1995 Boothe, without his knowledge, purchased 1000 shares of Motorola stock at 64 1/4 for a total purchase price of \$64,352.35, 1500 shares of Best Buy Company, Inc. at 21 7/8 for a total purchase price of \$32,964.85 and 1500 shares of Logic Corporation at 38 5/8 for a total purchase price of \$58,089.85. Claimant also alleged that he did not learn of these purchases until he received a confirmation of the buy. Claimant maintained, that when he learn of the stock

purchases, he telephoned Boothe who told him the stocks had been sold for a profit. Claimant asserted that his December statement indicated that these stocks had not been sold. Claimant further asserted that on December 20, 1995 he began taping his telephone conversations with Boothe because he believed Boothe was making misrepresentations to him. Claimant also asserted that the stock was not sold until February 16, 1996 and only after he had contacted Boothe's office manager and demanded that the stock be taken out of his account. Claimant further asserted that he lost \$30,578.29 and was charged an additional \$708.40 in interest.

Respondents, in their Joint Answer, maintained that the Claimant opened his account with Respondent DWR in August 1995 and that he has been investing in the stock market for over ten years and had a net worth exceeding five million dollars. Respondents further maintained that Claimant's goals for the account were capital appreciation and speculation. Respondents contended that Claimant authorized each and every transaction in the account and that all of Claimant's instructions were carried out promptly. Respondents further maintained that Claimant was aware of the risks involved in the stock market. Respondents asserted that the transcript of the conversations between them and the Claimant indicated that he was aware of and directed all the activity in his account.

Respondents also asserted as affirmative defenses that the statement of claim failed to state a claim upon which relief may be granted, respondents did not act with any intent to defraud Claimant, there were no misrepresentations or omissions of material facts, claimant caused the loss, claimant has waived his claims and that there was no negligence by Respondents in handling claimant's account.

#### **RELIEF REQUESTED**

Claimant, John H. Rasnick, requested damages from Respondents for misrepresentation, failure to follow instructions and unauthorized purchases in the amount of \$31,279.04 plus punitive damages in the amount of \$100,00.00

Respondents requested that all of Claimant's claims be dismissed in their entirety and costs be assessed against him.

#### **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 remain on file with NASD Regulation, Inc.

The arbitrators have made the following rulings concerning respondents Dean Witter and Byron Boothe who failed to execute and submit a Submission Agreement:

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 the controversy arose and consequently the panel found jurisdiction over Dean Witter Reynolds.

3. The panel found that Byron Boothe was an associated person of a member of the NASD at the time the controversy arose and therefore, the panel found personal jurisdiction over Byron Boothe pursuant to Rule 10301 of the Code.

4. In view of the above, the panel found that Dean Witter Reynolds, Inc. and Byron Boothe were required to file with the NASD a properly executed Submission Agreement pursuant to Rule 10314(b) of the Code.

### 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, Dean Witter Reynolds Inc. and Byron Boothe be and hereby are jointly and severally liable and shall pay to the Claimant the sum of \$31,279.04.
2. Claimant's request for punitive damages is hereby denied.
3. All other requests for relief be and hereby are denied.

### FORUM FEES

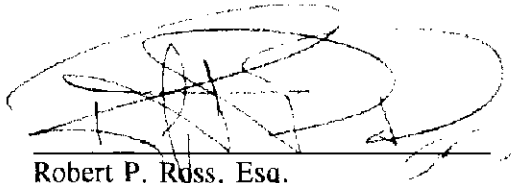
Pursuant to Rule 10332 of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc., shall retain the \$200.00 non-refundable filing fee previously deposited by Claimant and have assessed the following forum fees:

Two hearing sessions x \$750.00	= \$1,500.00
Minus Claimant's \$750.00 Deposit	= <u>\$ 750.00</u>
Total outstanding	= \$ 750.00

The panel has determined that Dean Witter Reynolds, Inc. and Byron Boothe shall bear the entire cost of this arbitration. Therefore respondents, Dean Witter Reynolds Inc. and Byron Boothe, be and hereby are jointly and severally liable for the sum of \$1,500.00 representing the total amount of forum fees assessed. Respondents be and hereby are jointly and severally liable and shall pay to NASD Regulation, Inc. the sum of \$750.00 and shall be jointly and severally liable to pay to Claimant, John H. Rasnick, the sum of \$750.00, as reimbursement of the hearing session deposit.

Fees are payable to NASD Regulation, Inc.

ARBITRATORS' SIGNATURES

A handwritten signature in dark ink, appearing to be "R. P. Ross", written over a horizontal line.

Robert P. Ross, Esq.  
Public Chairman

Date of Decision 4/8/97

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Hugh C. Durbin  
Public Panelist


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Rudy Vincenti  
~~Industry~~ Panelist

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Robert P. Ross, Esq.  
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