

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Stephen Roach, Jr., and
Dorothy A. Roach,

Claimants,

v.

No. 96-04852

Dean Witter Reynolds, Inc., and
Giovanni Volpe,

Respondents.

REPRESENTATION OF PARTIES

Claimants Stephen Roach, Jr. and Dorothy A. Roach ("Claimants") were represented by Anthony V. Trogan, Esq. of Weisman, Trogan, Young, & Schloss, P.C. located in Bingham Farms, Michigan.

Respondents Dean Witter Reynolds, Inc. ("Dean Witter") and Giovanni Volpe ("Volpe") (collectively referred to as "Respondents") were represented by Mark R. Werder, Esq. of Honigman, Miller, Schwartz and Cohn located in Detroit, Michigan.

CASE INFORMATION

The Statement of Claim was filed on or about October 31, 1996.

Claimants' Submission Agreement was signed on October 25, 1996.

The Joint Statement of Answer was filed on or about January 13, 1997.

Respondent Dean Witter's Submission Agreement was signed on January 10, 1997.

Respondent Volpe's Submission Agreement was signed on December 6, 1996.

NASD Regulation, Inc. Office of Dispute Resolution
Arbitration No. 96-04852
Award Page 2 of 4

HEARING INFORMATION

The telephonic pre-hearing conference was held on February 16, 1998 for one (1) session.

The hearing was held on December 2, 1997 for two (2) sessions; December 3, 1997 for two (2) sessions; February 23, 1998 for two (2) sessions; February 24, 1998 for two (2) sessions; April 15, 1998 for three (3) sessions; and April 16, 1998 for two (2) sessions. The hearing was held in Southfield, Michigan.

CASE SUMMARY

Claimants alleged that they were unsophisticated investors with little experience in investing prior to meeting Respondents. Claimants contended that Respondents recommended and sold highly speculative and risky investments, including Foxmeyer Health Corporation stock, which were unsuitable based on their conservative investment objectives. Claimants maintained that Respondents churned their accounts through excessive use of margin in order to produce large commissions for Respondents. Claimants asserted that Respondents repeatedly touted their skill and expertise and knowledge of the markets and events, in addition to claiming that they had access to secret and confidential inside information. Claimant maintained that Respondents engaged in a continuum of negligent and/or intentional acts which violated the various federal and state securities laws, statutes, and the rules and regulations of the NASD and NYSE.

Respondents denied all liability to Claimants in the Statement of Answer. Respondents characterized this action as a case of assertive, involved and largely self-directed investors, who having suffered a disappointment, want to shift blame and shift responsibility to others. Respondents alleged that all transactions at issue were consistent with Claimants' objectives and with their personal and financial circumstances. Respondents asserted that the Claimants are precluded from any recovery since they expressly authorized, approved, consented and ratified each and every transaction in their account. Respondents contended that any and all duties owed to Claimants, whether by reason of some contract or statute, were diligently and adequately satisfied.

RELIEF REQUESTED

Claimants requested an award of the following: \$144,905.00 as out-of-pocket loss; interest at 12%; costs; attorney fees; exemplary and punitive damages; additional damages; and recession of

NASD Regulation, Inc. Office of Dispute Resolution
Arbitration No. 96-04852
Award Page 3 of 4

all transactions.

Respondents requested that the Statement of Claim be dismissed in its entirety with prejudice, plus an award of their costs.

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(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 dismissed in its entirety with prejudice;
- (2) 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
- (3) That any relief not specifically enumerated is hereby 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 thirteen (13) hearing sessions x \$750 = \$9,750 in forum fees. There was one (1) pre-hearing session x \$300 = \$300 in forum fees. Total forum fees = \$10,050 Pursuant to §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 §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 shall retain as forum fees the

NASD Regulation, Inc. Office of Dispute Resolution
Arbitration No. 96-04852
Award Page 4 of 4

hearing session deposit in the amount of \$750 previously deposited by the Claimants.

Pursuant to §10332(c) of the Code, Claimants are jointly and severally liable for and shall pay forum fees in the amount of \$4,275 (1/2 forum fees-hearing session deposit). Pursuant to §10332(c) of the Code, Respondents are jointly and severally liable for and shall pay forum fees in the amount of \$5,025 (1/2 forum fees). Pursuant to §10333 of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain Respondent Dean Witter's member surcharge in the amount of \$350. Pursuant to §10319 of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain Respondents' postponement fee in the amount of \$750.

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

Concurring Arbitrators' Signatures:

/s/ Marvin I. Horowitz, Esq.
Marvin I. Horowitz, Esq.
Chairperson
Public Arbitrator

April 24, 1998
Dated:

/s/ Barbara A. Johannessen, Esq.
Barbara A. Johannessen, Esq.
Panelist
Public Arbitrator

April 20, 1998
Dated:

/s/ Timothy D. Wasson
Timothy D. Wasson
Panelist
Industry Arbitrator

April 23, 1998
Dated:

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

April 27, 1998