

AWARD
NASD Regulation, Inc.

In the Matter of the Arbitration Between

Jeff Rymer and Lisa Rymer,
SJHR Investments, Stephen J.
Roach III and Dorothy Roach,

Claimants,

v.

No. 96-05689

Giovanni Volpe, and
Dean Witter Reynolds, Inc.,

Respondents.

REPRESENTATION OF PARTIES

Claimants Jeff Rymer, Lisa Rymer, SJHR Investments, Stephen J. Roach III and Dorothy Roach, (collectively referred to as "Claimants") were represented by Anthony V. Trogan, Esq. of Weisman, Trogan, Young & Schloss, P.C. located in Bingham Farms, Michigan.

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

CASE INFORMATION

The Statement of Claim was filed on or about December 24, 1996.

The Submission Agreement for Power Tools Plus Dean Witter VIP Plus Profit Sharing Plan was signed on March 26, 1997 by Jeff Rymer as Trustee for the Plan.

The Submission Agreements for Jeff Rymer and Lisa Rymer, SJHR Investments, Stephen J. Roach III and Dorothy Roach were signed on December 16, 1997.

The Joint Statement of Answer was filed on or about June 4, 1997.

The Submission Agreement for Dean Witter was signed on August 21, 1997.

The Submission Agreement for Volpe was signed on May 13, 1997.

HEARING INFORMATION

The telephonic pre-hearing conferences were held on February 3, 1998 for two(2) sessions; July 16, 1998 for one (1) session; July 23, 1998 for one (1) session.

The hearing was held on August 4, 1998 for two (2) sessions; August 5, 1998 for two (2) sessions; August 6, 1998 for two (2) sessions; August 10, 1998 for two (2) sessions; August 11, 1998 for two (2) sessions; August 12, 1998 for two (2) sessions; October 1, 1998 for two (2) sessions; October 2, 1998 for two (2) sessions; December 9, 1998 for two (2) sessions; December 10, 1998 for two (2) sessions; December 11, 1998 for two (2) sessions; December 18, 1998 for one (1) session; January 19, 1999 for two (2) sessions; and January 20, 1999 for two (2) sessions.

The hearing location was Southfield, Michigan.

CASE SUMMARY

Claimants Jeff and Lisa Rymer are husband and wife. Stephen Roach is a single man who maintained a joint account with his mother Dorothy Roach for estate planning purposes. Jeff Rymer and Stephen Roach were business associates who formed SJHR investments for the purpose of opening an account using money they jointly contributed. Respondent Volpe was an account executive assigned to Claimants' nine accounts maintained at Dean Witter.

In their Statement of Claim, Claimants maintained that they fully disclosed all pertinent facts to Respondents concerning their finances, assets and conservative investment objectives. Claimants alleged that their past investments evidenced extreme reluctance to tolerate risk in their portfolio. Claimants cited to the fact that Jeff and Lisa Rymer's joint account was devoted exclusively to tax-free government bonds and CDs, as well as the fact that the various Steven Roach accounts were replete with dozens of CD purchases.

In contrast to their stated investment objectives, Claimants contended that Respondents wrongfully induced them into speculative trading involving large position day trading on margin. Claimants asserted that their heavily margined accounts became improperly concentrated in large positions of Foxmeyer Health Corporation stock which was purchased based on Respondents' claims of inside and confidential information. Claimants maintained that they incurred losses in

excess of \$850,000 after the value of Foxmeyer plummeted. Claimants contended that the value of the securities placed in Claimants' accounts have fallen so low that it does not appear prudent to sell the stocks as the only hope of recouping losses is for the value of the stocks to rebound. Claimants alleged that they were abandoned after Respondent Volpe subsequently left Dean Witter and that Dean Witter announced that it does not follow Foxmeyer.

Respondents denied all liability to Claimants in their Statement of Answer. Respondents alleged that Claimants were active and experienced stock traders who independently conducted their own research concerning Foxmeyer and were highly informed regarding the risks of Foxmeyer. Respondents cited to the fact that Stephen Roach and Jeff Rymer owned their own personal quote machine. Respondents contended that Volpe merely processed Claimants' Foxmeyer transactions as an order taker and even did this only after satisfying himself that the Claimants were well aware of their alternatives and accepted the increased risks associated with the Foxmeyer investment. Respondents maintained that the Foxmeyer purchases were unsolicited by Respondents and that Volpe specifically told Claimants that Foxmeyer was not followed by Dean Witter and he knew next to nothing about the company or its prospects.

RELIEF REQUESTED

In the Statement of Claim, Claimants requested an award of the following: \$850,000 as out-of-pocket loss; interest at 12%; costs; attorney fees; exemplary and punitive damages; additional damages; and rescission of all transactions.

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

OTHER ISSUES CONSIDERED & DECIDED

Respondents' Motion to Dismiss was denied by unanimous decision of the panel.

Pursuant to Rule 10326 of the NASD Code of Arbitration Procedure ("Code"), Respondents shall provide the NASD with a complete copy of the hearing transcript for its permanent file.

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 Respondent Dean Witter Reynolds, Inc. is liable for and shall pay to Stephen J. Roach III compensatory damages in the amount of \$9,000.00;
- (2) That Respondent Dean Witter Reynolds, Inc. is liable for and shall pay to Stephen J. Roach III and Dorothy Roach compensatory damages in the amount of \$100,000.00;
- (3) That Respondent Dean Witter Reynolds, Inc. is liable for and shall pay to Jeff Rymer compensatory damages in the amount of \$27,000.00;
- (4) That Respondent Dean Witter Reynolds, Inc. is liable for and shall pay to Jeff Rymer and Lisa Rymer compensatory damages in the amount of \$11,000.00;
- (5) That Respondent Dean Witter Reynolds, Inc. is liable for and shall pay to Stephen J. Roach III and Jeff Rymer compensatory damages in the amount of \$53,000.00 for all claims arising in connection with the SJHR account;
- (6) That all claims against Giovanni Volpe are hereby dismissed in their entirety with prejudice;
- (7) That this decision is based on the panel's finding that Dean Witter failed in its duty to supervise the conduct of Giovanni Volpe, who was a relatively new and inexperienced broker;
- (8) 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
- (9) 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 \$1,000 per hearing session and \$300 for each pre-hearing conference, if any. There were twenty-seven (27) hearing sessions x \$1,000 = \$27,000 in forum fees. There were four (4) pre-hearing conference x \$300 = \$1,200 in forum fees. Total forum fees = \$28,200. 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 \$250 and shall retain as forum fees the hearing session deposit in the amount of \$1,000 previously deposited by the Claimants.

Pursuant to Rule 10332(c) of the Code, Claimants are jointly and severally liable for and shall pay forum fees in the amount of \$13,100 (1/2 forum fees - hearing session deposit).

Pursuant to Rule 10332(c) of the Code, Respondents are jointly and severally liable for and shall pay forum fees in the amount of \$14,100 (1/2 forum fees).

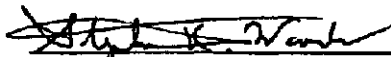
OTHER COSTS

Pursuant to Rule 10333 of the Code, Respondent Dean Witter has paid to NASD Regulation, Inc. the \$500 member surcharge previously invoiced.

Pursuant to Rule 10332(c) of the Code, Respondent Dean Witter is liable for and shall pay all costs incurred by the NASD in connection with Respondents' request for special security procedures at the January hearing in the amount of \$1,287.

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

Concurring Arbitrators' Signatures:


Stephen K. Woods, Esq.
Chairperson
Public Arbitrator

FEBRUARY 5, 1999
Dated:

A. Robert Bliven
Panelist
Public Arbitrator

Dated:

Ronald C. Peters, CPA, CTA
Panelist
Industry Arbitrator

Dated:

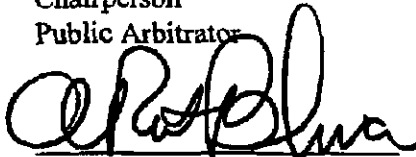
For NASD Regulation use only:
Date award served on parties: _____

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Public Arbitrator



A. Robert Bliven
Panelist
Public Arbitrator

Dated:

2/5/99

Dated:

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Panelist
Public Arbitrator

Dated:



Ronald C. Peters, CPA, CTA
Panelist
Industry Arbitrator

2/10/99
Dated:

For NASD Regulation use only:
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