

NASD REGULATION, INC.
AWARD

In the Matter of the Arbitration Between

Name of Claimant

Carter L. Doolittle

vs.

Case No.
98-00004

Name of Respondents

Thomas J. Parilla and Dean Witter Reynolds, Inc.

REPRESENTATION

For Claimant Carter L. Doolittle ("Claimant") appeared Harold J. Bender, Esq. of the firm Gifford Lay & Johnson, located in Erie, Pennsylvania.

For Respondents Thomas J. Parilla ("Parilla") and Dean Witter Reynolds, Inc. ("Dean Witter") (collectively "Respondents") appeared James D. Yellen, Esq., in-house counsel for Dean Witter Reynolds Inc., located in New York, New York.

CASE INFORMATION

Claimant's Statement of Claim was filed on January 8, 1998.
Claimant's Submission Agreement was signed on December 23, 1997.

Respondents' Statement of Answer was filed on February 24, 1998.
Respondents' Submission Agreement was signed on March 6, 1998.

HEARING INFORMATION

Pre-Hearing Conference: June 3, 1998

Hearing Date/Sessions: September 24, 1998 - 3 sessions

The hearings were conducted at the Westin Wm. Penn in Pittsburgh, PA.

CASE SUMMARY

Claimant alleges that at the time he opened an account with Dean Witter in September 1995, he was a used car sales manager with no investment experience. Claimant maintains that, upon investing \$143,896.66 in a brokerage account, Claimant explicitly stated that his objectives were to preserve his capital, generate a higher rate of return than he was receiving on his funds at the bank, and to have all of his principal available to him as close to January 1, 1996 as possible for the purposes of closing on a business transaction. Claimant asserts that these objectives were understood by Parilla. Claimant further asserts that Parilla advised him to initially begin trading in stocks of companies with which Claimant was generally familiar.

Claimant avers that, at year end 1995, he informed Parilla that his business transaction would be slightly delayed, and contrary to previous estimates, wouldn't need his principal until probably February or March 1996. Claimant states that he wanted to make some interest on his money until that time. Claimant alleges that Parilla, knowing Claimant's investment objectives, recommended he acquire FTP Software ("FTPS"), a relatively new public company of which Claimant had never heard. Claimant further alleges that Parilla told him that FTPS was as secure as prior purchases and that he had nothing to worry about.

Claimant contends that, through 1994 and 1995, FTPS had huge swings in price, ranging from \$11.50 in 1994 to \$40.62 in 1995. Claimant asserts that shortly after he purchased 7,400 shares of FTPS at 13-1/4, which Claimant still holds, FTPS's share price started to descend, and continued to drop to less than \$5.00 per share. Claimant further asserts that such willful indifference to Claimant's investments constitutes common law and constructive fraud. Claimant asserts that Parilla and Dean Witter, under the principle of *respondeat superior*, breached their contractual and fiduciary duties to Claimant by recommending an investment inconsistent with Claimant's stated goals and objectives. Claimant also asserts that Dean Witter failed to supervise its registered representative, thereby violating federal and state securities law.

Respondents maintain that, when Claimant opened his account with Dean Witter, he explicitly told Parilla that his investment objective was aggressive growth. Respondents also maintain that Parilla recommended a more diversified portfolio from the start, but Claimant instead sought to invest in speculative issues which he had read about on his own. Respondents assert that the investment in FTPS originated from Claimant's own call and were not solicited by Parilla.

Respondents assert that they acted in good faith and according to applicable rules and regulations at all times. Respondents further assert that Claimant directly approved, or authorized, all transactions thereby becoming estopped from asserting claims set forth in the Statement of Claim. Respondents aver that any alleged losses which may have occurred resulted from adverse market conditions, as well as Claimant's failure to exercise due diligence in supervising his financial affairs, and cannot be attributed to Respondents. Respondents also aver that Claimant is not entitled to an award of attorney's fees, punitive damages, interest or costs.

RELIEF REQUESTED

Claimant requests \$84,649.83 in compensatory damage, consequential damages at the rate of 6% for lost profits from January 4, 1996 to the date of payment, unspecified punitive damages, costs and disbursements of this action, including reasonable attorneys' fees, filing fees, travel costs, and other relief as the panel deems just and proper.

Respondent requests that Claimant's Statement of Claim be dismissed in its entirety as well as being awarded attorney's fees and costs incurred as a result of this action.

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 remains 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. Claimant's requests for relief are denied;
2. Respondents' request for attorney's fees and costs are denied;
3. Based upon the merits of this case, the panel hereby orders that all references to this arbitration be expunged from Parilla's permanent CRD record by NASD Regulation, Inc.
4. All other claims for relief are hereby denied.

OTHER COSTS

Pursuant to Rule 10333 of the *Code of Arbitration Procedure* ("Code"), Dean Witter Reynolds, Inc. has paid NASD Regulation, Inc. the \$1,000.00 member surcharge previously invoiced.

FORUM FEES

Pursuant to Rule 10332(c) of the *NASD Regulation Code of Arbitration Procedure ("Code")*, the arbitrators have determined that the NASD will retain the \$150.00 non-refundable filing fee deposited by Claimant and have assessed the following Forum Fees to be borne equally by the parties:

1 Pre-Hearing Conference (Full Panel)	-	\$ 500.00
3 Hearing Sessions	-	\$1,500.00
Total	-	\$2,000.00


1. Claimant be and hereby is liable for the sum of \$1,000.00, representing one-half of the forum fees assessed. Claimant previously deposited \$500.00 with NASD Regulation, Inc., therefore, Claimant shall pay the balance of \$500.00.
2. Respondents be and hereby are liable for and shall pay the sum of \$1,000.00, representing one-half of the forum fees assessed.

Fees are payable to NASD Regulation, Inc.

ARBITRATION PANEL

Richard W. Dissen, Esq.	-	Public Chairperson
Cynthia M. Frederick, Esq.	-	Public Panelist
Garry Lee Hogan	-	Industry Panelist

CONCURRING ARBITRATOR'S SIGNATURE

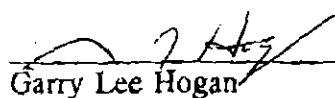

Richard W. Dissen, Esq.

Date of decision: December 31, 1998

ARBITRATION PANEL

Richard W. Dissen, Esq.	-	Public Chairperson.
Cynthia M. Frederick, Esq.	-	Public Panelist
Garry Lee Hogan	-	Industry Panelist

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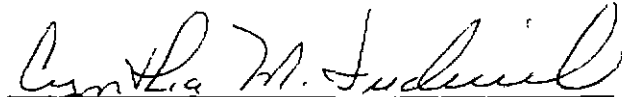

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Cynthia M. Frederick, Esq.

Date of decision: ____ December 31, 1998