

AWARD

NASD Regulation, Inc.

In the Matter of the Arbitration Between

Names of Claimants

Libro Ferrero
Audrey Ferrero

98-00454

Names of Respondents

Dean Witter Reynolds, Inc.
Herman Harris Held

REPRESENTATION

For Claimants Libro and Audrey Ferrero: John C. Kelly, Esq. of Ackerman, Link & Sartory, P.A., West Palm Beach, Florida.

For Respondents Dean Witter Reynolds, Inc. ("DWR") and Herman Harris Held ("Held"): Joseph C. Coates, III, Esq. of Steel Hector & Davis, West Palm Beach, Florida.

CASE INFORMATION

Statement of Claim filed: February 4, 1998.

Claimants' Submission Agreement signed: June 19, 1997.

Joint Statement of Answer filed by Respondents: April 9, 1998.

Respondent DWR's Submission Agreement/Corporate Acknowledgment signed: June 10, 1998 by Allison Barry Doneghey on behalf of the firm.

Respondent Held did not file a properly executed Submission Agreement.

HEARING INFORMATION

On August 28, 1998, the arbitration panel conducted a pre-hearing conference which lasted one (1) session.

On February 10, 1999, the arbitration panel conducted a hearing which lasted two (2) sessions in Boca Raton Florida.

CASE SUMMARY

Claimants alleged that in February of 1996, they advised Respondent Held, their broker at DWR, that they had purchased 2000 shares of Capital Cities/ABC, Inc. stock ("Capital") for only \$1,250.00 and that they did not want a capital gain from the merger of Capital with the Walt Disney Company; that during a face to face meeting with Held, Claimants showed Held a proxy statement addressing the merger and directed Held to a paragraph entitled "Exchange of Capital Cities Common Stock solely for New Disney Common Stock"; that Claimants told Held that they wished to exchange their Capital stock for Walt Disney stock just like the paragraph described; that after reading the paragraph, Held confirmed to Claimants that there would be no capital gain upon the exchange; and, that Claimants then asked Held to effect the change on their behalf and left their Capital certificates with DWR for use in the transaction. Claimants further alleged that rather than making the exchange of shares as instructed, Respondents sold their Capital shares and purchased Walt Disney shares with the proceeds; that Claimants were not aware of the sale until they made their annual visit to their accountant to have their taxes done; and, that Claimants learned that the capital gain from the sale of the Capital stock resulted in a tax debt of \$70,353.40. Claimants maintained that the debt could have been avoided had Respondents simply followed their instructions. Claimants requested damages against Respondents for their alleged wrongdoing under claims for unauthorized trading, breach of contract, breach of fiduciary duty, failure to supervise and gross negligence.

Respondents denied all allegations of wrongdoing contained in the Statement of Claim and maintained that all transactions in Claimants' accounts were authorized and denied that DWR is liable to pay Claimants' capital gains taxes on a profitable transaction. Respondents further alleged that Claimants ratified and approved the transaction at issue by their discussions with Respondents and by Claimants' authorization and instructions to proceed with the transaction at issue and by Claimants' failure to complain after receiving confirmations and monthly statements. Respondents also denied that there was any basis for the arbitration panel to award attorney's fees and did not consent to the Panel's consideration of this issue.

RELIEF REQUESTED

Claimants requested damages in the amount of \$71,807.59 (including \$1,454.19 representing disgorgement of the commissions made by Respondents on the transaction at issue); reimbursement of all costs of this arbitration, including attorneys' fees, expert witness fees, filing fees and other expenses; and, punitive damages in an amount to be determined by the arbitration panel.

Respondents requested that the Statement of Claim be dismissed in its entirety; that the Claimants be assessed all forum fees; and, that the panel enter an order expunging this incident from Respondent Held's Central Depository (CRD) record.

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 NASD Regulation, Inc.

The parties did not stipulate that the arbitration panel could determine the issue of attorneys' fees.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent DWR is found liable and shall pay to Claimants the sum of \$45,777.00.
2. Respondent Held is found not liable and, therefore, all claims against him are hereby dismissed.
3. Claimants' requests for disgorgement of commissions, reimbursement of costs including expert witness fees, filing fees, other expenses and punitive damages are hereby denied.
4. Respondents' request for the expungment of Held's CRD record is hereby denied.
5. Respondent DWR shall pay to Claimants the additional sum of \$500.00 representing reimbursement of the hearing session deposit previously paid by Claimants.

FORUM FEES

Pursuant to Rule 10332(b) of the Code of Arbitration Procedure ("the Code"), a hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with an arbitrator, which lasts four hours or less.

Pursuant to Rule 10332(c) of the Code, the arbitrators have assessed forum fees in the amount of \$1,500.00 (one (1) pre-hearing conference (panel) x \$500.00 + two (2) hearing sessions x \$500.00).

1. Respondent DWR is assessed forum fees in the amount of \$1,500.00 for which NASD Regulation, Inc. shall retain the \$500.00 previously deposited by the Claimants and the \$500.00 previously deposited by DWR in partial satisfaction thereof leaving a balance due to NASD Regulation, Inc. by DWR of \$500.00.

OTHER COSTS

1. Pursuant to Rule 10332 of the Code, Claimants have paid to NASD Regulation, Inc. the claim filing fee of \$150.00.
2. Pursuant to Rule 10333 of the Code, Respondent DWR has paid to NASD Regulation, Inc. the member surcharge of \$1,000.00.
3. Pursuant to Rule 10333(d) of the Code, Respondent DWR has paid to NASD Regulation, Inc. the pre-hearing process fee of \$600.00.
4. Pursuant to Rule 10333(d) of the Code, Respondent DWR has paid to NASD Regulation, Inc. the hearing process fee of \$1,500.00.

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

ARBITRATION PANEL

Concurring Arbitrators' Signatures

/s/
James W. Geiger, Esq.

Public/Chairperson

/s/
Charles T. Steffens

Industry/Panelist

/s/
Geoffrey M. Swan

Public/Panelist

Date of Decision: March 15, 1999