

**Award**  
**NASD Regulation, Inc.**

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In the Matter of the Arbitration Between:

Jeffrey B. and Janet Lewis, (Claimants) vs. Dean Witter Reynolds, Inc., Glen K. Kashetsky,  
and Jill Bobigan, (Respondents)

Case Number: 98-03947

Hearing Site: New York, NY

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**REPRESENTATION OF PARTIES**

Claimants, Jeffrey B. and Janet Lewis, hereinafter collectively referred to as "Claimants":  
Michael F. Rachner, Esq., Bachner & Gehn, New York, NY.

Respondents, Dean Witter Reynolds, Inc. ("Dean Witter"), Glen K. Kashetsky  
("Kashetsky"), and Jill Bobigan ("Bobigan"), hereinafter collectively referred to as  
"Respondents": James D. Yellen, Esq., Vice President, Senior Attorney, Morgan Stanley,  
Dean Witter, New York, NY.

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Statement of Claim filed on or about: October 20, 1998.

Jeffrey B. Lewis signed the Uniform Submission Agreement: October 5, 1998

Janet Lewis signed the Uniform Submission Agreement: October 5, 1998.

Statement of Answer filed by Respondent on or about: January 30, 1999.

Dean Witter signed the Uniform Submission Agreement: December 21, 1998.

Kashetsky signed the Uniform Submission Agreement: February 22, 1999.

Bobigan did not sign the Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract; breach of fiduciary  
duty; fraud; negligence; conversion; and, failure to supervise.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the  
Statement of Claim and asserted the following defenses: Claimant is a sophisticated investor  
with over thirty (30) years of investment experience, including much experience in trading in  
speculative securities and IPO's; Mr. Lewis authorized the purchases of Broadcast.com, then  
renegeed on the trades without justification; after consenting to one extension, Claimant  
continued to decline to pay for the trades; Morgan Stanley Dean Witter properly liquidated  
Claimant's position at the end of the extended time period to pay; and, Claimant is

responsible for the market loss.

**RELIEF REQUESTED**

Claimants requested:

Compensatory Damages	\$89,473.18
Punitive Damages	unspecified
Interest	at the rate of 9%
Attorneys' Fees	unspecified

Respondents requested an award dismissing the Statement of Claim in its entirety together with costs, and that the U-4 records of Kashetsky and Bohigan be expunged of any references to the claims in this case.

**OTHER ISSUES CONSIDERED AND DECIDED**

During the hearing in this matter, Claimants limited their claims to failure to mitigate damages.

Bohigan did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

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.

**AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claim is hereby dismissed in its entirety
2. Upon confirmation of this Award by a court of competent jurisdiction, NASD Regulation, Inc. shall expunge all references to this arbitration from the permanent CRD records of Kashetsky and Bobigan.
3. All other requests for relief are hereby denied

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:  
Initial claim filing fee = \$ 500.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated persons at the time of the events giving rise to the dispute. In this matter, Dean Witter Reynolds, Inc. is a party.

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,500.00

#### **Adjournment Fees**

Adjournments requested during these proceedings:

November 23, 1999, adjournment by Claimants	= \$ 500.00
The entire amount of this postponement has been attributed to Claimants.	

#### **Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator x \$ 300.00	= \$ 300.00
Pre-hearing conference: September 1, 1999 1 session	
Two (2) Pre-hearing sessions with Panel x \$500.00	= \$1,000.00
Pre-hearing conferences: July 16, 1999 1 session	
December 1, 1999 1 session	
Two (2) Hearing sessions x \$500.00	= \$1,000.00
Hearing Date: February 29, 2000 2 sessions	
Total Forum Fees	= \$2,300.00

1. The Panel has assessed \$1,300.00 of the forum fees against Claimants.
2. The Panel has assessed \$1,000.00 of the forum fees jointly and severally against Respondents.

**Fee Summary**

1. Claimants be and hereby is solely liable for:

Initial Filing Fee	= \$ 150.00
Adjournment Fee	= \$ 500.00
<u>Forum Fees</u>	<u>= \$1,300.00</u>
Total Fees	= \$1,950.00
<u>Less payments</u>	<u>= \$1,450.00</u>
Balance Due NASD Regulation, Inc.	= \$ 500.00

2. Dean Witter be and hereby is solely liable for:

<u>Member Fees</u>	<u>= \$3,100.00</u>	Member Fees
Total Fees	= \$3,100.00	Total Fees
<u>Less payments</u>	<u>= \$3,100.00</u>	Less payments
Balance Due NASD Regulation, Inc.	= \$ 0.00	Balance Due NASD Regulation, Inc.

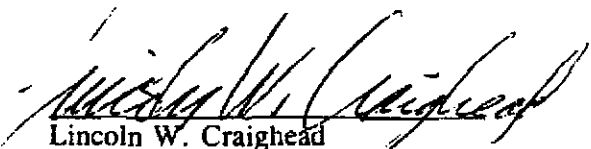
3. Respondents be and hereby are jointly and severally liable for:

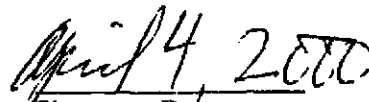
<u>Forum Fees</u>	<u>= \$1,000.00</u>	Forum Fees
Total Fees	= \$1,000.00	Total Fees
<u>Less payments</u>	<u>= 0.00</u>	Less payments
Balance Due NASD Regulation, Inc.	= \$1,000.00	Balance Due NASD Regulation, Inc.

All balances are due and payable to NASD Regulation, Inc

**Concurrence Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

  
Lincoln W. Craighead  
Public Arbitrator, Presiding Chair

  
Signature Date

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Samuel H. Chorchos, Esq.  
Public Arbitrator

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Signature Date

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Vito J. Cassan, Esq.  
Industry Arbitrator

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Signature Date

April 19, 2000

Date of Service (For NASD office use only)

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

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Lincoln W. Craighead  
Public Arbitrator, Presiding Chair

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Signature Date

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Samuel H. Chorches, Esq.  
Public Arbitrator

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Signature Date

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Samuel H. Chorches, Esq.  
Public Arbitrator

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Vito J. Cassan, Esq.  
Industry Arbitrator

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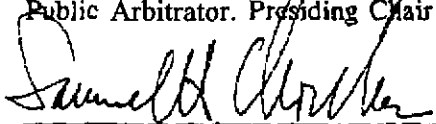
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Lincoln W. Craighead  
Public Arbitrator, Presiding Chair



Samuel H. Chorchos, Esq.  
Public Arbitrator

Signature Date

3/27/00

Signature Date

Vito J. Cassan, Esq.  
Industry Arbitrator

Signature Date

April 19, 2000

Date of Service (For NASD office use only)