

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between:
Dean Witter Reynolds, Inc. vs. Keith A. West

Case Number: 99-1203

Hearing Site: Detroit, Michigan

REPRESENTATION OF PARTIES

Claimant, Dean Witter Reynolds, Inc. ("DWR"), hereinafter referred to as "Claimant": Jean Vierre Adams, Esq., Honigman Miller Schwartz and Cohn, Detroit, Michigan.

Respondent, Keith A. West ("West"), hereinafter referred to as "Respondent": Anthony V. Trogan, Esq., Weisman, Trogan, Young & Schloss, P.C., Bingham Farms, Michigan.

CASE INFORMATION

Statement of Claim filed on or about: February 26, 1999

Claimant signed the Uniform Submission Agreement: March 9, 1999

Answer and Counterclaim filed by Respondent on or about: March 19, 1999

Respondent signed the Uniform Submission Agreement: May 13, 1999

Claimant's Reply to Counterclaim filed on or about: August 30, 1999

CASE SUMMARY

Claimant asserted the following causes of action: failure to comply with the terms of a margin agreement. Claimant denied the allegations made in Respondent's Counterclaims and asserted the following defenses: failure to prove existence of a contract; Respondent directed his own trading; NASD rules do not create independent legal causes of action; and assumption of the risk.

Respondent, Keith West, D.D.S., alleged that he opened his accounts at Dean Witter in 1996 as a result of solicitations by a friend, who was a stock broker with Dean Witter Reynolds, Inc. Claimant further alleged that the account was opened with Claimant for the purpose of buying treasury bonds and mutual funds only.

Respondent asserted that soon after the accounts were opened, Claimant began to recommend stock trading. Respondent stated that he resisted at first, but then agreed to trade based upon Claimant's recommendations. Respondent alleged that option trading ensued which resulted in Respondent's losses during the period September to December 1998. According to Respondent, during this time, Claimants lacked the personnel, training, experience and supervision to manage the type of trading they were encouraging Respondent to conduct. Respondent averred that Claimant not only failed to mitigate its damages, but dissipated Respondent's equity and increased his loss wherein Respondent

sustained losses and margin debt in excess of \$100,000, and total liquidation of his account. Respondent countered Claimant's claim of damages and claimed breach of contract; breach of fiduciary duty; negligence; intentional, reckless and negligent misconduct; and violation of margin rules, policies and procedures.

RELIEF REQUESTED

Claimant requested damages of \$329,067.62, plus interest, attorneys' fees, arbitration costs, and any further relief the panel deems just proper.

Respondent requested that Claimant's claim be dismissed without award in Claimant's favor and an award of damages against Claimant in an amount between \$100,000 and \$400,000.00. Respondent's relief request was modified at hearing.

OTHER ISSUES CONSIDERED AND 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.

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.) Respondent Keith A. West is solely liable for and shall pay to Claimant Dean Witter Reynolds, Inc., the sum of \$319,660.00 in compensatory damages;
- 2.) Respondent Keith A. West is solely liable for and shall pay to Claimant Dean Witter Reynolds, Inc., the sum of \$49,868.00 in pre-judgement interest per contract;
- 3.) Respondent Keith A. West is solely liable for and shall pay to Claimant Dean Witter Reynolds, Inc., post-judgement interest per statute beginning to accrue on the NASD Date of Service of the Award until paid in full;
- 4.) Respondent Keith A. West is solely liable for and shall pay to Claimant Dean Witter Reynolds, Inc., the sum of \$750.00 as reimbursement for forum fees retained by NASD Regulation, Inc.;
- 5.) The Counterclaim of Respondent Keith A. West is dismissed with prejudice;
- 6.) That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;

- 7.) That any relief not specifically enumerated is hereby denied with prejudice.

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
Counterclaim	= \$200.00

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 person(s) at the time of the events giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$3,500.00*

* based on amount in controversy including Counterclaim requesting damages between \$100,000.00 and \$400,000.00 at time of notification of first hearing session (October 7, 1999)

Adjournment Fees

Adjournments requested during these proceedings:

April 3-5, 2000, adjournment by Dean Witter Reynolds, Inc. = \$ 750.00 (waived)

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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), 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(s): March 20, 2000 1 session

Two (2) Pre-hearing sessions with Panel x \$750.00 = \$1,500.00

Pre-hearing conferences: September 14, 1999 1 session

April 3, 2000 1 session

Five (5) Hearing sessions x \$750.00 = \$3,750.00

Hearing Dates: April 26, 2000 2 sessions

May 3, 2000 3 sessions

Total Forum Fees = \$5,550.00

The Panel has assessed \$ 4,800.00 of the forum fees to Keith A. West.
The Panel has assessed \$ 750.00 of the forum fees to Dean Witter Reynolds, Inc.

Fee Summary

Claimant, Dean Witter Reynolds, Inc., be and hereby is solely liable for:

Initial Filing Fee	= \$ 500.00
Member Fees	= \$ 5,600.00
<u>Forum Fees</u>	= \$ 750.00
Total Fees	= \$ 6,850.00
<u>Less payments</u>	= \$ 7,450.00
Balance Due NASD Regulation, Inc.	= \$ (600.00)

Respondent, Keith A. West, be and hereby is solely liable for:

Type Filing Fee	= \$ 200.00
<u>Forum Fees</u>	= \$ 4,800.00
Total Fees	= \$ 5,000.00
<u>Less payments</u>	= \$ 1,425.00
Balance Due NASD Regulation, Inc.	= \$ 3,575.00

All balances are due to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

/s/ Burton L. Ansell, Esq.
Burton L. Ansell, Esq.
Public Arbitrator, Presiding Chair

05/26/00
Signature Date

/s/ Michael J. Meeusen
Michael J. Meeusen
Public Arbitrator

05/23/00
Signature Date

/s/ Harold I. Gach, Esq.
Harold I. Gach, Esq.
Industry Arbitrator

05/25/00
Signature Date

05/26/00
Date of Service (For NASD office use only)

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