

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimants

Edward and Priska Ratkovich

v.

Case No. 99-01279

Name of Respondents

Dean Witter Reynolds Inc. (n/k/a Morgan Stanley Dean Witter, Inc.)
Mark A. Rodgers

REPRESENTATION OF PARTIES

Claimants Edward Ratkovich and Priska Ratkovich ("Claimants") were represented by Burton H. Finkelstein, Esq. and Shannon P. Keniry, Esq. of the law firm of Finkelstein, Thompson & Loughran, Washington, DC.

Respondent Dean Witter Reynolds, Inc. ("Dean Witter") was represented by William H. Pratt, Esq. and Todd S. Schulman, Esq. of the law firm of Kirkland & Ellis, New York, NY and by Allison Doneghey, Vice President and Senior Attorney, Morgan Stanley Dean Witter, Inc., New York, NY.

Respondent Mark A. Rodgers ("Rodgers") was represented by Stanley T. Padgett, Esq. of the law firm of Morgan, Padgett, Mierzwinski, P.A., Tampa, FL.

CASE INFORMATION

Statement of Claim filed on March 17, 1999.

Claimants signed the Uniform Submission Agreement on March 5, 1999.

Claimants filed response to Counterclaim on May 28, 1999.

Statement of Answer and Counterclaim filed by Dean Witter on May 17, 1999.

Dean Witter's Uniform Submission Agreement was executed by James D. Yellen, First Vice President and Senior Attorney of Dean Witter on April 15, 1999.

Statement of Answer filed by Rodgers on June 7, 1999.

Rodgers' did not file a Uniform Submission Agreement.

CASE SUMMARY

Claimants alleged the following causes of action: fraud; misrepresentations and omissions;

unsuitability; unauthorized trading; failure to follow instructions of clients; abuse of discretion in trading; violation of margin rules; conflict of interest; breach of fiduciary duty. Claimants alleged that Rodgers executed a series of unsolicited and unauthorized transactions of e-Net stock in Claimants' Dean Witter account.

Unless specifically admitted in its Answer, Dean Witter denied each and every allegation of wrongdoing contained in the statement of claim and asserted the following affirmative defenses: Claimants have no valid claim; Claimants are presumed to have known the risk of speculating in the stock market; Claimant failed to mitigate their losses; the claim is time barred by applicable statutes of limitation; Claimants have failed to state a claim upon which relief can be granted.

Dean Witter asserted in its counterclaim, among other things, that it is entitled to recover all damages sustained as a result of Claimants' interference with Dean Witter's contractual and business relations as well as damages caused to its reputation. Moreover, to the extent that Dean Witter incurs any liability and damages in any arbitration brought by members of the short-squeeze investor group, Claimants are liable to Dean Witter for contribution to such losses.

Unless specifically admitted in its Answer, Rodgers asserted the following affirmative defenses: Claimants are estopped from complaining about the trading in their accounts; Claimants were knowledgeable enough to retain both legal and de facto control of their accounts at all time; the Economic Loss Rule bars the tort law claims for breach of fiduciary duty and common law fraud; Rodgers adopts all affirmative defenses of any other respondents.

RELIEF REQUESTED

Claimants requested:

Compensatory Damages	\$6,645,424
Punitive Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Rescission of the 390,000 unauthorized e-Net shares purchased.	

Claimants requested that Dean Witter's counterclaim be dismissed in its entirety.

Dean Witter requested that Claimants' claim be dismissed in its entirety.

Dean Witter, in its counterclaim, requested an award for all damages sustained as a result of Claimants' interference with Dean Witter's contractual and business relations as well as damages caused to its reputation.

Rodgers requested that Claimants' claim be dismissed with prejudice and further requested that the Panel award him his attorney's fees and costs.

OTHER ISSUES CONSIDERED AND DECIDED

Rodgers filed an answer and was represented by counsel at the hearing. Rodgers 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.

Dean Witter, during the hearing, withdrew its counterclaim.

Dean Witter and Rodgers made a Motion for Directed Verdict after evidentiary hearing on the ratification issue. The Panel has decided to grant Dean Witter and Rodgers' motion, thereby, dismissing Claimants' claim with prejudice.

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, and the briefs submitted, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. As mentioned in "Other Issues Considered And Decided" Claimants' claims against Dean Witter and Rodgers are dismissed.
2. That the parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below.
3. That any and all relief requests not specifically addressed herein is denied in its entirety.

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	= \$300
Counterclaim filing fee	= \$500

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 at the time of the event giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$3,000
Pre-hearing process fee	= \$ 600
Hearing process fee	= \$5,000

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:

2 Pre-hearing session with the Panel x \$1,500	= \$ 3,000
Pre-hearing dates:	
October 25, 1999	1 session
March 17, 2000	1 session
13 Hearing sessions with Panel x \$1,500	= \$19,500
Hearing dates:	
April 3, 2000	2 sessions
April 4, 2000	1 session
April 10, 2000	2 sessions
April 11, 2000	2 sessions
April 12, 2000	2 sessions
April 17, 2000	2 sessions
April 18, 2000	2 sessions
Total Forum Fees	= \$22,500

The Panel has assessed \$7,500 of the forum fees to Claimants.

The Panel has assessed \$7,500 of the forum fees to Dean Witter.

The Panel has assessed \$7,500 of the forum fees to Rodgers.

Fee Summary

Claimants be and hereby are solely liable for:

Initial Filing Fee	= \$ 300
Forum Fees	= \$7,500
Total Fees	= \$7,800
Less Payments	= \$7,900

Refund Due Claimants = \$ 100

Dean Witter be and hereby is solely liable for:


Member Fees	= \$ 8,600
Counter-claim Fee	= \$ 500
Forum Fees	= <u>\$ 7,500</u>
Total Fees	= \$16,600
Less Payments	= <u>\$18,300</u>
Refund Due Dean Witter	= \$ 1,700

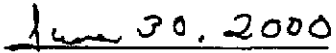
Rodgers be and hereby is solely liable for:

Forum Fees	= \$ 7,500
Less Payments	= <u>\$ 0</u>
Balance Due NASD Regulation, Inc.	= \$ 7,500

All balances are due and payable to NASD Regulation, Inc.

Concurring Arbitrators' Signatures


Sandra Lee Dolan, Esq.
Public Arbitrator, Chairperson

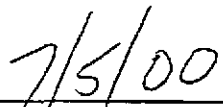

Date Award Signed

Kenneth F. Baer
Public Arbitrator, Panelist

Date Award Signed

James M. Metcalf
Non-Public Arbitrator, Panelist

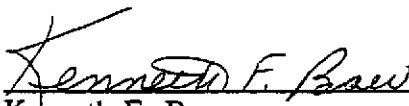
Date Award Signed

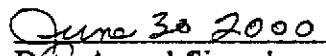

Date Award/Served by NASD Regulation, Inc.

Concurring Arbitrators' Signatures

Sandra Lee Dolan, Esq.
Public Arbitrator, Chairperson

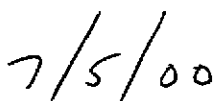
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Date Award Signed


James M. Metcalf
Non-Public Arbitrator, Panelist

6/30/00
Date Award Signed

7/5/00
Date Award Served by NASD Regulation, Inc.