

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between:

Steven Horn Roth Account, Steven Horn Personal Account and Steven Horn IRA Account (Claimant) vs. Morgan Stanley Dean Witter Reynolds, Inc. and Perry Rampley, (Respondents).

Case Number: 99-02660

Hearing Site: San Francisco, CA

REPRESENTATION OF PARTIES

Claimant, Steven Horn Roth Account, Steven Horn Personal Account and Steven Horn IRA Account (hereinafter collectively referred to as "Claimant Horn"): Steven M. Gordon, Esq., Law Offices of Steven M. Gordon, Inc., 344 Salinas Street, Suite 103, Salinas, CA 93901.

Respondent, Morgan Stanley Dean Witter Reynolds, Inc. (hereinafter referred to as "Respondent Dean Witter"): Ronald Wood, Esq., Dean Witter Reynolds, Inc. 101 California Street, 8th Floor, San Francisco, CA 94111.

Respondent Perry Rampley (hereinafter referred to as "Respondent Rampley"): Ronald Wood, Esq., Dean Witter Reynolds, Inc., 101 California Street, 8th Floor, San Francisco, CA 94111.

CASE INFORMATION

Statement of Claim filed on or about: June 11, 1999

Claimant Horn signed the Uniform Submission Agreement: May 25, 1999

Statement of Answer filed by Respondent Dean Witter and Respondent Rampley: on or about: August 20, 1999

Respondent, Dean Witter signed the Uniform Submission Agreement: August 18, 1999

Respondent, Rampley signed the Uniform Submission Agreement: August 24, 1999

CASE SUMMARY

Claimant Horn asserted the following: Claimant Horn maintained three separate brokerage accounts; a personal account, an IRA account, and a Roth IRA account with Respondent Dean Witter through its account executive, Respondent Rampley. Claimant Horn made numerous trades in three accounts throughout 1998 without any unusual incidents. However, commencing on February 1, 1999 through February 23, 1999, Respondent Rampley failed to execute several transactions as instructed by Claimant Horn. Claimant Horn maintained that he had several conversations with Respondent Rampley during that time period, and that Respondent Rampley, on some occasions, simply failed to execute transactions, on other occasions stated that Claimant Horn should bring in new money if he wanted to buy more stock, and then on other occasions Respondent Rampley told Claimant Horn that he was too busy with other customers to speak and

hung up the telephone on Claimant Horn. At all times in 1999, Claimant Horn only traded with the securities and cash in his accounts, and did not use margin (borrowed funds). It was Claimant Horn's usual practice, when he wished to invest in a new security, to direct Respondent Rampley to sell the investments currently held in all three accounts, and to use all the proceeds to purchase as many shares as possible of the new security to be acquired.

The written policies of Respondent Dean Witter required its account representatives to follow certain formal procedures in accepting orders and in maintaining "financial advisor DayTimers" to memorialize conversations with customers as well as trade orders. Respondent Rampley's DayTimer allegedly did not reflect the conversations that he had with Claimant Horn, thereby supporting Claimant Horn's contentions that Respondent Rampley failed to execute several trades as instructed by Claimant Horn.

Unless specifically admitted in their Answer, Respondent Dean Witter and Respondent Rampley denied all allegations made in the Statement of Claim and asserted the following: Respondent Dean Witter and Respondent Rampley contend that Claimant Horn never requested any of the alleged trades that he now complains of, or ever previously enjoyed investment selection success similar to what Claimant Horn now claims he would have enjoyed but for Respondent Rampley's alleged failure to execute the trades in question. At the time of the first purported trade request, Claimant Horn had an aggregate portfolio value of \$33,756. In the prior five years of his relationship with Respondent Dean Witter and Respondent Rampley, Claimant Horn's portfolio value reached a high of approximately \$50,000 in November 1995. Claimant Horn maintained that had the requested transactions been executed his portfolio value would have increased almost 13-fold in approximately nine days, to \$432,884, the amount Claimant Horn sought in damages in the original Statement of Claim.

Respondent Dean Witter and Respondent Rampley further allege that even if Claimant Horn had requested the subject transactions, by not promptly complaining that the trades had not been executed, and by authorizing that assets intended for such previously requested trades be directed into new investments, Claimant Horn waived his right to protest the unexecuted trades and further failed to mitigate damages by not then acquiring the previously requested securities.

RELIEF REQUESTED

Claimant Horn requested:

Compensatory Damages

\$230,982.94 in lost profit damages.¹

Respondent Dean Witter and Respondent Rampley requested:

Attorneys' Fees

According to proof.

¹Subsequent to filing the Statement of Claim, Claimant Horn reduced the amount of his damages sought from \$432,884.34 to \$230,982.94. The reduction was confirmed at the arbitration hearing.

Costs
Non-Monetary Relief

According to proof.
That the claim be dismissed in its
entirety.

OTHER ISSUES CONSIDERED AND DECIDED

On February 22, 2000, Claimant Horn submitted a Case Statement which reported his alleged damages as \$230, 982.94, an amount different than that reported in his Statement of Claim, the latter amount being \$432,884.34. The reduction in the stated damages was confirmed by the Panel during the arbitration hearing.

At the close of Claimant Horn's case, Respondent Dean Witter and Respondent Rampley entered a motion for a directed verdict. The Panel denied the motion.

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:

Claimant Horn's claim for lost profits due to Respondent Dean Witter and Respondent Rampley's alleged failure to properly execute trades as per Claimant Horn's alleged instructions is denied.

Respondent Dean Witter and Respondent Rampley's request for attorneys' fees and costs for the proceedings is denied.

All other claims are denied in their 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

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 events giving rise to the dispute. In this matter, the member firms is a party.

Member surcharge	= \$1500
Pre-hearing process fee	= \$ 600
<u>Hearing process fee</u>	<u>= \$2500</u>
Total member fees	= \$4600

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:

Two (2) Pre-hearing sessions with Panel x \$1125	= \$2250
Pre-hearing conferences: January 14, 2000	1 session
February 24, 2000	1 session
Four (4) Hearing sessions x \$1125	= \$4500
Hearing Dates: March 21, 2000	2 sessions
March 22, 2000	<u>2 sessions</u>
Total Forum Fees	= \$6750

1. The Panel has assessed \$3375 of the forum fees to Claimant Horn.
2. The Panel has assessed \$3375 of the forum fees jointly and severally to Respondent Dean Witter and Respondent Rampley.

Fee Summary

Claimant Horn is hereby solely liable for:

Initial Filing Fee	= \$ 300
Costs	= \$ 5
<u>Forum Fees</u>	<u>= \$ 3375</u>
Total Fees	= \$ 3680
<u>Less payments</u>	<u>= \$ 1430</u>
Balance Due NASD Regulation, Inc.	= \$ 2250

Respondent Dean Witter is hereby solely liable for:

<u>Member Fees</u>	<u>= \$ 4600</u>
Total Fees	= \$ 4600
<u>Less payments</u>	<u>= \$ 4600</u>

Balance Due NASD Regulation, Inc. = \$ 0

Respondent Dean Witter and Respondent Rampley are hereby jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$ 3375</u>
Total Fees	= \$ 3375
<u>Less Payments</u>	<u>= \$ 0</u>
Balance Due NASD Regulation, Inc.	= \$ 3375

All balances are due to NASD Regulation, Inc. and are payable within 30 days of the service date of this Award.

Concurring Arbitrators' Signature(s)

Peter H. Daly
Public Arbitrator, Presiding Chair

Signature Date

Linda M. McCoy, CPA
Public Arbitrator

Signature Date

William G. Dempsey
William G. Dempsey
Industry Arbitrator

Date Served:

APR 20 2000

4/13/00
Signature Date

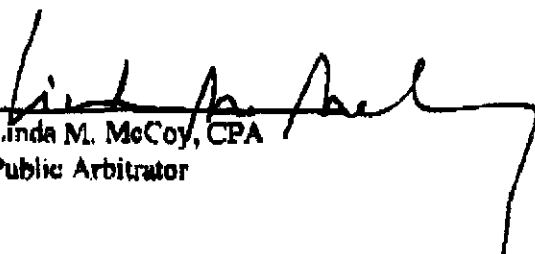
Date of Service (For NASD office use only)

NASD Regulation, Inc. Office of Dispute Resolution
 Arbitration No. 99 02660
 Award Page 6 of 6

Concurring Arbitrators' Signature(s)

 Peter H. Daly
 Public Arbitrator, Presiding Chair

 Signature Date


 Linda M. McCoy, CPA
 Public Arbitrator

4/14/00
 Signature Date

 William G. Dempsey
 Industry Arbitrator
 Date Served:
 APR 20 2000

 Signature Date

 Date of Service (For NASD office use only)