

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Thomas Elliott, James A. Fisher, Jr., and Margaret M. Fisher, (Claimants) vs. Westle Securities, LLC, Marin Asset Management, LLC, Presidio Capital Management, LLC, Joel Westle, and Richard Westle, (Respondents)

Case Number: 99-02953

Hearing Site: Philadelphia, Pennsylvania

REPRESENTATION OF PARTIES

Claimants, Thomas Elliott ("Elliott"), James A. Fisher, Jr. ("J. Fisher"), and Margaret M. Fisher ("M. Fisher"), hereinafter collectively referred to as "Claimants": Neil F. Mara, Esq., Berger & Montague, P.C., Philadelphia, PA.

Respondents, Westle Securities, LLC ("Westle"), Marin Asset Management, LLC ("Marin"), Presidio Capital Management, LLC ("Presidio"), Joel Westle ("J. Westle"), and Richard Westle ("R. Westle"), hereinafter collectively referred to as "Respondents": Dennis C. Dice, Esq., Marshall, Dennehey, Warner, Coleman and Goggin, Philadelphia, PA.
Previously represented by: Justin Levine, Esq., Seijas & Levine, Bronx, NY.

CASE INFORMATION

Statement of Claim filed on or about: July 10, 1998.

Elliott signed the Uniform Submission Agreement: July 6, 1998.

J. Fisher and M. Fisher signed the Uniform Submission Agreement: July 6, 1998.

Joint Statement of Answer and Motion to Dismiss filed by Respondents on or about: August 16, 1999.

Westle signed the Uniform Submission Agreement: July 12, 2000.

Marin did not sign the Uniform Submission Agreement.

Presidio did not sign the Uniform Submission Agreement.

J. Westle did not sign the Uniform Submission Agreement.

R. Westle signed the Uniform Submission Agreement: July 11, 2000.

CASE SUMMARY

Claimants asserted the following causes of action: violations of the Securities Act of 1933; violations of the Exchange Act of 1934 and SEC Rule 10b-5; common law fraud; breach of contract; breach of fiduciary duty; and violation of the Pennsylvania Securities Act.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to set forth a basis of recovery from any of the Respondents that is recognized in law or in equity; Claimants knowingly and intentionally assumed the risks associated with the investments being complained of; any alleged losses asserted by Claimants are the result of their failure to exercise their own due diligence and/or due care with respect to their investment decision; Claimants knew and understood the risks associated with the investment being complained of and willingly assumed those risks; the nature of the transactions were suitable in light of Claimants' financial circumstances and stated investment objectives; the transactions complained of were duly authorized by Claimants who, at all times, were in sole control of their assets and the transactions now being complained of; Claimants' alleged damages have no causal relationship with any act committed by or legally attributable to Respondents; Respondents, in discharging their duties, if any, to Claimants, acted in good faith and exercised that degree of care, diligence, and skill which ordinary prudent men would exercise in similar circumstances and like position; Claimants' claims are barred under the "Bespeaks Caution" Doctrine; Claimants, at all relevant times, had full knowledge of all material facts concerning the complained of investment; Claimants authorized the complained of transaction with full knowledge of all material facts thereto and, accordingly, Claimants' demands are barred by the applicable principles of waiver, ratification, and estoppel; Claimants, with full knowledge of all material facts concerning said investments, by their actions waived the alleged claims set forth in the Statement of Claim; Claimants did not reasonably rely to their detriment on any action or inaction of or legally attributable to Respondents; Claimants' claims are barred by the applicable statute of limitations; Claimants' claims are ineligible for NASD arbitration; and Claimants have failed to mitigate their alleged damages.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$110,000.00 plus foregone interest; punitive damages; interest from the date of loss; costs and reasonable attorneys' fees; and any other relief that the Panel may find just, fair, and proper.

Respondents requested that the Panel dismiss all claims against them and award Respondents reasonable fees and costs incurred by them in investigating and defending these matters.

OTHER ISSUES CONSIDERED AND DECIDED

This matter was originally filed with, and administered by, the American Stock Exchange ("AMEX") Arbitration Department. As of June 1, 1999 the AMEX Arbitration Department was dissolved and the further administration of this matter was assumed by NASD Dispute Resolution, Inc. (formerly the NASD Regulation, Inc. Office of Dispute Resolution).

Respondents, Marin, Presidio and J. Westle, did not file with NASD Dispute Resolution, Inc. or the AMEX Arbitration Department properly executed submissions to arbitration but are required to submit to arbitration pursuant to the AMEX Code of Arbitration Procedure and, having answered the claim, appeared and testified at the hearing, are 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, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents be and hereby are jointly and severally liable for and shall pay to Elliot the sum of \$38,455.00 as compensatory damages, plus interest in the amount of \$8,076.00.
2. Respondents be and hereby are jointly and severally liable for and shall pay to J. Fisher and M. Fisher the sum of \$75,469.00 as compensatory damages, plus interest in the amount of \$16,981.00.
3. Claimants' request for punitive damages is hereby denied.
4. Respondents be and hereby are jointly and severally liable for and shall pay to the law firm of Berger & Montague, P.C. the amount of \$40,000.00 for Claimants' attorneys' fees, plus the amount of \$6,657.00 for costs. The Panel awarded attorneys' fees and costs in accordance with Claimants' request.
5. Respondents' request for attorneys' fees in hereby denied.

6. Respondents be and hereby are jointly and severally liable for and shall pay to Claimants the sum of \$200.00, to reimburse Claimants for the filing fee previously paid to NASD Dispute Resolution, Inc.
7. All other requests for relief are hereby denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 200.00

Adjournment Fees

Adjournments requested during these proceedings:

January 18, 19, & 20, 2000, adjournment by Respondents = \$ 750.00

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:

Four (4) Pre-hearing sessions with Panel x \$750.00 = \$3,000.00

Pre-hearing conferences:	September 7, 1999	1 session
	November 22, 1999	1 session
	January 11, 2000	1 session
	July 5, 2000	1 session

Six (6) Hearing sessions x \$750.00 = \$4,500.00

Hearing Dates:	July 10, 2000	2 sessions
	July 11, 2000	2 sessions
	July 12, 2000	2 sessions

Total Forum Fees = \$7,500.00

The Panel has assessed all of the forum fees jointly and severally against Respondents.

Fee Summary

1. Claimants be and hereby are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 200.00
<u>Total Fees</u>	= \$ 200.00
<u>Less payments</u>	= \$1,300.00
<u>Refund Due Claimant</u>	= \$1,100.00

As stated in the "Award" section above, Respondents are jointly and severally liable and shall reimburse Claimants for the \$200.00 filing fee.

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

<u>Forum Fees</u>	= \$7,500.00
<u>Adjournment Fee</u>	= \$ 750.00
<u>Total Fees</u>	= \$8,250.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution, Inc.</u>	= \$8,250.00

All balances are due and payable to NASD Dispute Resolution, Inc.

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Concurring Arbitrators' Signatures

John Adam Kerns, Esq.
Public Arbitrator, Presiding Chair.

Signature Date

James A. Jennings, Esq.
Public Arbitrator

Signature Date

Norman T. Wilde
Norman T. Wilde
Industry Arbitrator

November 1, 2000
Signature Date

November 2, 2000
Date of Service (For NASD office use only)

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Concurring Arbitrators' Signatures



John Adam Kerns, Jr., Esquire
Public Arbitrator, Presiding Chair

October 30, 2000

Signature Date

James A. Jennings, Esq.
Public Arbitrator

Signature Date

Norman T. Wilde
Industry Arbitrator

Signature Date

November 2, 2000
Date of Service (For NASD office use only)