

**Stipulated Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between

**Names of Claimants**

Hilton J. Kimless

Ina Kimless

Case No. 99-04473

**Names of Respondents**

Dean Witter Reynolds, Inc.

Philip E. Rosensweig

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**REPRESENTATION OF PARTIES**

For Ina Kimless and Hilton J. Kimless ("Kimless"), hereinafter collectively referred to as "Claimants": Russell Silverglate, Esq., Dickenson, Murdoch, Rex and Sloan, Boca Raton, Florida.

For Respondent Dean Witter Reynolds, Inc. ("Dean Witter"): Allison Barry Doneghey, Vice President, Senior Attorney, Law Department, Dean Witter Reynolds, Inc., Sarasota, Florida.

For Respondent Philip Rosenweig ("Rosenweig"): Peter W. Homer, Esq., Homer, Bonner & Delgado, P.A., Miami, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: October 1, 1999.

Claimants signed the Uniform Submission Agreement: September 30, 1999.

Statement of Answer filed by Respondent Dean Witter on or about: December 23, 1999.

Statement of Answer filed by Respondent Rosenweig on or about: December 23, 1999.

Respondent Dean Witter did not file an executed Uniform Submission Agreement.

Respondent Rosenweig did not file an executed Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following: Respondents violated, participated in violations, conspired to violate, aided and abetted violations of, substantially assisted, and/or are vicariously liable for violations of Section 517, Florida Statutes; Respondent Dean Witter intentionally, recklessly and/or negligently permitted unauthorized and unsuitable investments to be made;

Respondent Dean Witter was negligent in the supervision of Claimants' account; Respondents failed to meet the generally accepted standard of care in rendering financial and investment advice to Claimants; Respondents recommended and directed that Claimants invest in highly unsuitable, grossly speculative and fraudulent investments; and, Respondents failed to conduct or perform any meaningful due diligence in handling Claimants' account.

Unless specifically admitted in its Answer, Respondent Dean Witter denied the allegations made in the Statement of Claim and asserted the following: Claimants were fully advised of the relative risks inherent in their investments and knowingly chose to assume those risks; all of the transactions in Claimants' account were thoroughly discussed with them, were authorized by them and were effectuated with Claimants' full knowledge and consent; Claimants ratified and approved the subject transactions; no misrepresentation or omission of any material fact was made by Respondent Dean Witter concerning the investment transactions at issue; Respondent Dean Witter did not possess any intent to defraud Claimants and did not act with any reckless disregard of the financial consequences to Claimants; extraordinary market conditions and events not caused by or in the control of Respondent Dean Witter may have existed to cause any alleged losses; Claimants are barred from recovery based on their own negligence, contributory negligence or comparative negligence; Claimants have failed to mitigate any damages; and, any claims are barred by applicable statutes of limitations.

Unless specifically admitted in his Answer, Respondent Rosenweig denied the allegations made in the Statement of Claim and asserted the following: All transactions were suitable for Claimants' investment objectives and financial status and were consistent with Claimants' financial goals; Claimants were fully advised of the relative risks inherent in the investments and knowingly chose to assume those risks; Claimants have failed to mitigate any damages; Claimants authorized all transactions; all transactions were effectuated with Claimants' full knowledge and consent; Claimants ratified and approved all transactions; no misrepresentation or omission of any material fact was made by Respondent Rosenweig concerning the investment transactions at issue; Respondent Rosenweig did not possess any intent to defraud Claimants nor any reckless disregard of the financial consequences to Claimants; any recommendations were made in good faith; Claimants are bound by their signatures and representations made in completing the customer account agreement and customer account documentation; extraordinary market conditions and events not caused by or in the control of Respondent Rosenweig may have existed to cause certain alleged losses; Claimants action is barred by the economic loss doctrine; and, any claims are barred by applicable statutes of limitations.

#### **RELIEF REQUESTED**

Claimants requested compensatory damages of \$200,000.00, plus interest, costs, expenses and such other relief as the arbitration panel deemed just and proper.

Respondents Dean Witter and Rosenweig requested that all claims be dismissed in their entirety. Further, Respondent Rosenweig requested that he be awarded his costs and

attorneys' fees.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondents did not file with NASD Dispute Resolution, Inc. properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim and appeared, 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.

On or about October 27, 2000, Claimants informed NASD Dispute Resolution, Inc. that Claimants and Respondent Dean Witter resolved their differences and that the matter had been settled. Thereafter, on December 8, 2000, Respondent Rosenweig filed a Motion for Expungment of the Central Registration Depository Record of Phil E. Rosenweig which stated that Claimants had filed a voluntary dismissal, with prejudice, as to Respondent Rosenweig and which requested an expungment of Respondent Rosenweig's CRD record. On February 21, 2001, the arbitration panel granted Respondent Rosenweig's Motion for Expungment.

### **AWARD**

After considering the pleadings and the Motion for Expungment of the Central Registration Depository Record of Phil E. Rosenweig, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

All claims against Respondent Rosenweig are dismissed, with prejudice.

The Panel recommends the expungment of all references to the above-captioned arbitration proceeding from Respondent Rosenweig's CRD record maintained with the NASD with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Rosenweig must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungment directive.

### **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	= \$300.00
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### 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 firm is a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

### Adjournment Fees

Adjournments requested during these proceedings:

October 18 through October 20, 2000 hearing dates, joint adjournment request by Claimants and Respondents, adjournment fee assessed one-third to Claimant, one-third to Respondent Dean Witter and one-third to Respondent Rosenweig. = \$1,125.00

### 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:

One (1) Pre-hearing session with Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference: May 12, 2000	1 session
Total Forum Fees	= \$1,125.00

The Panel has assessed the total forum fees of \$1,125.00 to Respondent Dean Witter.

### Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

### Fee Summary

Claimants be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$300.00
Adjournment Fee	= <u>\$375.00</u>
Total Fees	= \$675.00
<u>Less payments</u>	= <u>\$675.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

Respondent Dean Witter be and hereby is solely liable for:

Member Fees	= \$4,600.00
Adjournment Fee	= \$ 375.00
Forum Fees	= <u>\$1,125.00</u>
Total Fees	= \$6,100.00
<u>Less payments</u>	= <u>\$6,100.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

Respondent Rosenweig be and hereby is solely liable for:

Adjournment Fee	= <u>\$375.00</u>
Total Fees	= \$375.00
<u>Less payments</u>	= <u>\$375.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

All balances are payable to NASD Dispute Resolution, Inc. and are due immediately upon receipt of the Award by the parties.

Concurring Arbitrators' Signatures

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Michael J. Levin, Esq.  
Public Arbitrator, Presiding Chair

\_\_\_\_\_  
Signature Date

1/5/  
J. Philip Knight  
Public Arbitrator

\_\_\_\_\_  
Signature Date

1/5/  
Bernard Hornick  
Industry Arbitrator

\_\_\_\_\_  
Signature Date

7/2/01  
Date of Service (For NASD-DR office use only)

Respondent Dean Witter be and hereby is solely liable for:

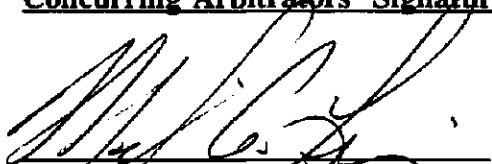
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Michael A. Levin, Esq.  
Public Arbitrator, Presiding Chair

6-01-01

Signature Date

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J. Philip Knight  
Public Arbitrator

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Signature Date

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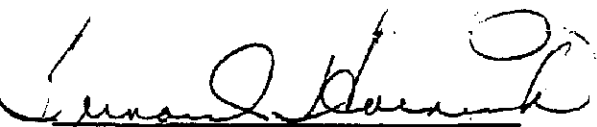
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Signature Date

  
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Bernard Hornick  
Industry Arbitrator

6/17/01  
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Signature Date

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