

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between:

Teresa K. Leung and Chung Wah Chiu, Claimants vs. Thomas F. White & Co., Inc. and Stephen Lee, Respondents.

Case Number: 99-01080

Hearing Site: San Francisco, California

REPRESENTATION OF PARTIES

Claimants, Teresa K. Leung (“Leung”) and Chung Wah Chiu (“Chiu”), hereinafter referred to as “Claimants”: Ronald D. Foreman, Esq., Foreman & Brasso, San Francisco, California

Respondents, Thomas F. White & Co., Inc. (“White”) and Stephen Lee (“Lee”), hereinafter referred to as “Respondents”: Robert Sullwold, Esq., Sullwold & Hughes, San Francisco, California and Michael G. Bolgatz, Esq., Thomas F. White & Co., Inc., San Francisco, California

CASE INFORMATION

Statement of Claim filed on or about: March 5, 1999

Claimant, Leung, signed the Uniform Submission Agreement: March 19, 1999

Claimant, Chiu, signed the Uniform Submission Agreement: March 19, 1999

Joint Statement of Answer filed by Respondents, White and Lee, on or about: July 2, 1999

Respondent, White, signed the Uniform Submission Agreement: June 30, 1999

Respondent, Lee, signed the Uniform Submission Agreement: June 30, 1999

CASE SUMMARY

Claimants *alleged* unauthorized sales with respect to their investments in AOL and EarthLink stock and further alleged the following claims: 1) negligence; 2) breach of fiduciary duty; 3) negligent representations; **4)** breach of the express and implied contract between Claimants and Respondents; *and* 5) fraud.

Respondents denied each and every material allegation contained in Claimants’ Claim and denied any liability to Claimants. Respondents alleged that Claimants’ loss, while unfortunate, was not caused by White or Lee but resulted from a forced liquidation of an unsatisfied margin call on a position purchased on an unsolicited basis. Respondents further alleged that Claimants’ failed trading strategy caused their loss, if any, and was not the result of any act, omission, or breach of duty by White or Lee. Respondents further alleged that they operated at all times within both the regulatory requirements held in this industry as well as pursuant to the terms of the written agreement so entered into and by and between Claimants and Respondents. Respondents further alleged that the risk of such potential loss, particularly regarding margin

calls, was at all material times known and accepted by Claimants. Respondents also asserted affirmative defenses.

RELIEF REQUESTED

Claimants requested an award of at least \$645,000.00 lost in their account with interest and/or lost opportunity costs of the sale of their securities. Claimants also requested punitive damages in an amount of not less than \$1,000,000.00.

Respondents White and Lee requested that:

1. Claimants take nothing against Respondents White and Lee by way of this action;
2. Claimants' Claim, and all counts therein, be dismissed with prejudice; and
3. That Respondents White and Lee be awarded arbitration fees, expenses, and reasonable attorneys' fees incurred in defending this arbitration proceeding.

OTHER ISSUES CONSIDERED AND DECIDED

On or about December 20, 1999, the Panel was advised that Claimants dismissed U.S. Clearing Corp., a division of Fleet Securities, Inc., as a party in this matter.

The Panel waived the \$1,000.00 postponement fee with respect to the adjourned hearing dates of March 27-29, 2000, in accordance with Claimants' request.

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. Although the Panel had difficulty with Respondents' manner of extending margin credit, Claimants did not show by a preponderance of the evidence proof of their claims. Accordingly, all claims by Claimants, including the claim for punitive damages, are dismissed.
2. All Forum fees shall be assessed against Respondents. Moreover, as sanctions for Respondents' failure to comply with NASD Rule 10321 and Discovery Orders issued herein, Respondents shall pay to Claimants the sum of \$5,000.00.
3. The parties shall each bear their respective costs including attorney's fees.

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 = \$250.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge = \$2,500.00
Pre-hearing process fee = \$ 600.00
Hearing process fee = \$4,500.00

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 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 Panel x \$1,000.00	= \$1,000.00
Pre-hearing conference: November 17, 1999 1 session	
One (1) Pre-hearing session with a single arbitrator x \$300.00	= \$300.00
Pre-hearing conference: April 13, 2000 1 session	
Four (4) Hearing sessions x \$1,000.00	= \$4,000.00
Hearing Dater:: May 31, 2000 2 sessions	
June 1, 2000 2 sessions	
<hr style="width: 50%; margin-left: 0;"/> Total Forum Fees	 = \$5,300.00

1. The Panel has assessed the \$5,300.00 in forum fees jointly and severally to Respondents, White and Lee.

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. The parties did not incur administrative costs.

1. Claimants, be and hereby are solely liable for:

Initial Filing Fee	= \$ 250.00
Member Fees	= \$ 0.00
Adjournment Fee	= \$ 0.00
Forum Fees	= \$ 0.00
<u>Administrative Costs</u>	= \$ 0.00
Total Fees	= \$ 250.00
<u>Less payments</u>	= \$1,250.00
Balance (Refund)	= \$1,000.00

2. U.S. Clearing Corp., be and hereby is solely liable for:

Initial Filing Fee	= \$ 0.00
Member Fees	= \$7,600.00
Forum Fees	= \$ 0.00
<u>Administrative Costs</u>	= 0.00
Total Fees	= \$7,600.00
<u>Less payments</u>	= \$7,600.00
Balance Due NASD Regulation, Inc.	= \$ 0.00

3. Respondent, White, be and hereby is solely liable for:

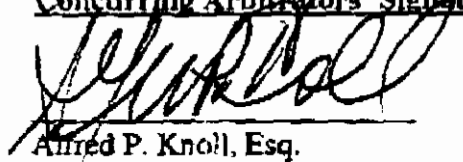
Initial Filing Fee	= \$ 0.00
Member Fees	= \$7,600.00
Forum Fees	= \$ 0.00
<u>Administrative Costs</u>	= \$ 0.00
Total Fees	= \$7,600.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Regulation, Inc.	= \$ 0.00

4. Respondents, White and Lee, be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 0.00
Member Fees	= \$ 0.00
Forum Fees	= \$5,300.00
<u>Administrative Costs</u>	= \$ 0.00
Total Fees	= \$5,300.00
<u>Less payments</u>	= 0.00
Balance Due NASD Regulation, Inc.	= \$5,300.00

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

Concurring Arbitrators' Signatures



Alfred P. Knoll, Esq.
Public Arbitrator, Presiding Chair

6/23/00

Signature Date

Joanna Leighton, Esq.
Public Arbitrator

Signature Date

John L. Cordova
Industry Arbitrator
Date Served:

Signature Date

JUL 1 0 2000

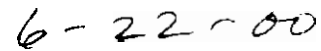
Date of Service (For NASD office use only)

Concurring Arbitrators' Signatures

Alfred P. Knoll, Esq.
Public Arbitrator, Presiding Chair,

Signature Date





Joanna Leighton, Esq.
Public Arbitrator

Signature Date

John L. Cordova
Industry Arbitrator

Signature Date

Date Served:

JUL 10 2000

Date of Service: (For NASD office use only)

Concurring Arbitrators' Signatures

Alfred P. Knoli, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Joanna Leighton, Esq.
Public Arbitrator

Signature Date



John L. Cordova
Industry Arbitrator

7-6-2000
Signature Date

Date Served:
JUL 1 0 2000

Date of Service (For NASD office use only)