

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC. -

In the Matter of the Arbitration Between

Judith Perper

Claimant

vs.

Dean Witter Reynolds, Inc. and  
Ralph Snyder

Respondents

AWARD

CASE NO. 86-00953

SUMMARY OF ISSUES

This claim arises from a complaint filed in San Diego Superior Court, Case #544692, dated July 8, 1985 naming Howard Reynolds, Jr. ("Reynolds"), Ralph L. Snyder ("Snyder") and Dean Witter Reynolds, Inc. ("Dean Witter") as defendants.

On July 3, 1986, a submission agreement was filed with the National Association of Securities Dealers, Inc. ("NASD") naming Dean Witter and Snyder as defendants. Subsequently, Dean Witter and Snyder named Reynolds in a cross-claim for indemnification.

The basic issues alleged are as follows:

Claimant had accounts with another brokerage prior to transferring her accounts to the Respondent. The prior accounts were carried in trust form with Mr. Reynolds, the Claimant's brother, as trustee. The accounts at Dean Witter were not in trust form. Reynolds commenced managing the accounts at Dean Witter through Respondent Snyder.

Claimant alleges that while the accounts were at Dean Witter, the Respondents allowed a variety of speculative investments, including options, to be made that were unsuitable in light of Claimant's financial position and monetary needs. The asset value of said accounts dropped from approximately \$165,000.00 to \$10,000.00. Claimant also alleges that said accounts were churned by Respondents.

Respondents contend that any claim for damages lies against Reynolds who acted as trustee and investment advisor to the Claimant and that the element of control was not shown in the allegation of churning.

### DAMAGES AND RELIEF REQUESTED

Claimant seeks to recover damages in excess of \$150,000.00 according to proof, prejudgment interest, punitive damages, attorneys' fees and costs plus damages for emotional distress.

Respondents seek dismissal of the claim in its entirety.

### DAMAGES AND RELIEF AWARDED

On February 21, 22 and 23, 1990 in San Diego, California, the undersigned arbitrators heard the controversy in six sessions between the parties as set forth in submissions to arbitration signed by Claimant Judith Perper on July 3, 1986 and by Respondent Dean Witter Reynolds, Inc. on October 16, 1986 and by Respondent Ralph Snyder on May 14, 1987. The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents Dean Witter Reynolds, Inc. and Ralph Snyder are jointly and severally liable for and shall pay to Claimant the sum of Twenty-Six Thousand, Six Hundred Eighty-Nine Dollars and No Cents (\$26,689.00).
2. No prejudgment interest is awarded.
3. All other claims of Claimant are dismissed.
4. The parties shall each bear their respective costs including attorneys' fees.
5. In accordance with Section 43 of the NASD Code of Arbitration Procedure:
  - a. the NASD shall retain the \$100.00 filing fee previously deposited by the Claimant;
  - b. Claimant Judith Perper is assessed and shall pay to the NASD, Inc. \$1,850.00 in forum fees; and
  - c. Respondent Dean Witter Reynolds is assessed and shall pay to the NASD, Inc. \$1,950.00 in forum fees.

### OTHER ISSUES

The cross-claim against Mr. Howard Reynolds was withdrawn due to a discharge in bankruptcy filed on June 9, 1989.

### Case Chronological Record:

1. Ordered to arbitration by Court, July 3, 1986.
2. Scheduled for July 15, 1987.
3. Reset for July 28 and 29, 1988.
4. Reset for September 22, 1988.
5. Reset for November 17 and 18, 1988 (Panel Ready).
6. Reset for June 13 and 14, 1989.
7. Reset for November 14 and 15, 1989.
8. Reset for February 21, 22 and 23, 1990.
9. Hearing held February 21, 22 and 23, 1990.

All continuances in this matter were at the request of the parties and approved by the panel of arbitrators after its appointment.

### PRESIDING ARBITRATORS

DATE SERVED: 03/30/90

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Franklin G. Allen, Esq.

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*William R. Newsome*  
William R. Newsome

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A. James Miranti