

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
)
DEAN WITTER REYNOLDS, INC.,)
)
) Claimant.)
) Case #87-02212
vs.)
)
)
RICHARD SANE,)
)
) Respondent.)
)

REPORT OF ARBITRATORS

Sane is an individual who has resided full time in Kissimmee, Florida for approximately five (5) years. While in college, Sane passed the Series 3 Examination and obtained a license to sell Mutual Funds. In the early 70's, Sane's trading activity in the stock market increased with various brokerage firms. Following his family's move to Florida in 1984, he began trading options on a full time basis.

During 1987, Sane's options trading occurred primarily with three firms, one of which was Dean Witter. Sane sought to earn income by writing puts on securities he wished to own if the market went against him. On occasion when the market went adverse to the positions in his account, he would write calls to generate additional income. Sane believed that he was on safe ground with this strategy as long as he maintained the "cash available" balance of his account at \$1,000,000 since he had at least \$2,000,000 in "buying power" to protect his account against margin calls. In November, 1979, Sane opened his first Dean Witter account while living in New York and executed several customer agreements. Sane opened his Dean Witter account after the brokerage firm he had been dealing with went bankrupt. Dean Witter had a 25 million dollar insurance policy which Sane believed would protect him from another misfortune.

Sane transferred his Dean Witter account to Orlando, Florida as a result of a "cold call". The Dean Witter broker had solicited Sane for over a year and when Sane became dissatisfied with his Dean Witter broker in New York, Sane transferred his account to Florida. The Dean Witter broker in Orlando transferred the account and used the addresses from the account jacket he had received from the New York office.

The Dean Witter broker in Orlando was Sane's account executive until he left the firm and was replaced by Richard Hudson. Sane kept his account at Dean Witter because of the Twenty Five Million Dollar insurance policy that only Dean Witter offered. Approximately 90% of Hudson's business was in CD's and Muni-Bonds. Hudson only had a handful of option and margin accounts, Sane's account being his largest.

In 1985, the account generated Twenty Eight Thousand and 00/100 (\$28,000) Dollars in gross revenues; in 1986, Seventy Six Thousand and 00/100 (\$76,000) Dollars; and in 1987, One Hundred Twenty-Two Thousand and 00/100 (\$122,000) Dollars. Sane expected timely execution of his orders, accurate information concerning the margin calls, and status of his account in terms of cash available and buying power. There were margin calls to the Sane account beginning at the close of business on October 9, 1987, ten days before the October 19th crash. At the opening of business on October 19, 1987, Dean Witter had notice of at least a 1.3 million dollar margin call in Sane's account.

Following the close of business on October 9th, there was no "cash available" or "buying power" balance in Sane's account. The Seven Hundred Fifty Thousand to One Million Dollars "cushion" had disappeared more than ten (10) days before the market crash. Before October 9th, Sane's account accumulated SMA which enabled it to buy stock without the deposit of additional capital or collateral.

There were Dean Witter house calls originating October 9, 1987, due October 16, 1987; and exchange calls originating on October 14, 1987, due October 16, 1987. At the opening of business on October 19, 1987, Dean Witter had notice of at least a 1.3 million dollar margin call in Sane's account. During the week of October 16, 1987, the following Dean Witter personnel were not in the office: Ramesh Chitalia was in Bombay, India; Ida Preston was out on a personal emergency on October 14, 15, and 16; and, James McNally was in Bermuda.

Sane never received any telegrams in Kissimmee, Florida until after October 20th. This was because the mailgrams were routed through Sane's New York address and received six days after the first call occurred. Sane had expected margin calls to be phoned to Kissimmee, Florida since he had been receiving duplicates of all Dean Witter monthly statements and confirmations at his Kissimmee address.

The Panel was persuaded to reach the decision reflected in the Award by the following factors brought out during the seven (7) days of hearings in the case. The Panel balanced the various factors and found compelling arguments for both the Claimant and Respondent. The Panel was impressed with the high quality of representation for both the Claimant and Respondent. The order of factors listed below is in no way indicative of the importance each factor played in the Panel's decision.

- a) Mr. Sane was a sophisticated, professional investor who closely directed and followed his various accounts with numerous securities firms.
- b). Mr. Sane relied on Dean Witter for execution of orders and information.
- c). Certain key Dean Witter supervisory and management personnel were absent during the vital week of October 16, 1987.
- d). The implied representation that Ramesh Chitalia was physically supervising the Dean Witter margin department during the week of October 16, 1987 was shown to be false.
- e). Dean Witter did not notify Mr. Sane by telephone of margin calls in his account.

- f). Because he was receiving margin calls from his accounts with other brokerage firms, Mr. Sane was or should have been aware that his Dean Witter account was deteriorating and in distress during the week of October 16, 1987 and that his bullish strategy contributed to that position.
- g). The Panel carefully applied the legal principles, which were argued by both sides and which are reflected in the record, to the foregoing factors.

H. Steven Holtzman, Esq.
James F. Turner III
Ralph Feith

Dated: August 11, 1989

