

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

George F. Hart, IV

Claimant

and

Dean Witter Reynolds, Inc.

Respondent

A W A R D

88-00379

CASE SUMMARY

In a claim filed with the NASD on or about February 5, 1988, Claimant George F. Hart, IV ("Hart"), a 51 year old blind man, alleged that Respondent Dean Witter Reynolds, Inc. ("Dean Witter") engaged in speculative and excessive options trading for Hart's securities account maintained at Dean Witter for the period of June 24, 1986 through April 20, 1987. Because Hart's account at Dean Witter was opened with the proceeds of monies received as a consequence of the accident which left him blind, Hart alleged that the options trading in his account was totally unsuitable given Hart's conservative investment strategy. Hart also alleged that Dean Witter failed to properly supervise its registered representative, Charles Browning, who serviced Hart's securities account at Dean Witter. Hart also alleged that Dean Witter's conduct violated NYSE and NASD regulations.

Dean Witter maintained that Hart was not unsuitable for the options trading strategy employed in Hart's securities account. Dean Witter alleged that Hart contacted Charles Browning at Dean Witter to discuss participation in options trading and that Browning fully explained the risks and strategies involved in options trading which Hart understood. Dean Witter also alleged that Browning told Hart on November 6, 1986 to re-examine his option trading strategies in favor of other strategies with a greater eye toward preservation of capital. Hart's losses were allegedly caused by a violent upward movement of the market during January 1987 which was historically unprecedented.

RELIEF REQUESTED

Hart requested damages of \$82,340.44, interest, costs and attorney's fees. Dean Witter requested that the claim be dismissed in its entirety.

OTHER ISSUES

At the hearing on September 29, 1989. Claimant George F. Hart withdrew his claim of unauthorized trading. Therefore, the panel did not consider this claim for purposes of the award.

AWARD

On Friday, September 29, 1989 and Thursday, November 30, 1989, in Little Rock, Arkansas during a hearing lasting three sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on January 29, 1988 by Claimant George F. Hart IV and on April 21, 1988 by Bruce J. MacEwen on behalf of Respondent Dean Witter Reynolds, Inc.

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. The arbitrators are satisfied that, in part because of his obvious handicap, when Mr. Hart began his trading options he was not fully aware of all risk involved. However, after a short trading period, Mr. Hart was aware that he had unexpected losses in his account and at that time he could have exercised reasonable diligence to discuss the matter with supervisors at Dean Witter and/or taken other actions to reduce the risk of the trading strategy which had been implemented. Therefore, Dean Witter is liable for and shall pay to Hart inclusive of interest, the sum of Nine Thousand Two Hundred Twelve Dollars and Forty Five Cents (\$9,212.45);

2. The parties shall each bear their respective costs and expenses including any attorney's fees incurred in this matter;

3. Pursuant to Section 30(b) of the NASD Code of Arbitration Procedure, the NASD shall retain the \$100 postponement fees paid by each party to receive a postponement of previously scheduled hearing dates in this matter; and

4. Pursuant to Section 43(b) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain as forum fees the \$500.00 filing fee previously deposited with the NASD by the Claimant George F. Hart, IV and Dean Witter is assessed and shall pay to the NASD an additional \$500.00 as forum fees.

By the Panel

Dated: February 7, 1990 /S/ Mark W. Grobmyer, ESq.
Presiding Chairman

Dated: February 8, 1990 /S/ W. Bradford Sherman

Dated: February 12, 1990 /S/ Frank Hiegel