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In the Matter of the Arbitration Between

Elizabeth D. Dovydenas

Claimant

vs.

#88-01165

Dean Witter Reynolds, Inc.

James M. Freed

Respondents

\* \* \* \* \*

Claimant Elizabeth D. Dovydenas alleged that Respondents Dean Witter Reynolds, Inc. and James M. Freed managed the Claimant's investment portfolio in an improper, fraudulent manner and misrepresented facts critical to the sale of a large block of Dayton-Hudson stock owned by the Claimant. Additionally, Claimant alleged that her broker James Freed breached fiduciary obligations owed to the Claimant when she relied upon him for the management of the bulk of her assets when he knew she was incapable of making independent investment decisions. Respondents maintained that they recommended against the sale of the large block of stock owned by the Claimant and advised Ms. Dovydenas of the tax exposure resulting in such a sale. Respondents further maintained that they never recommended unsuitable securities, recommended conservative investments, and discussed her investment strategy in detail with her ratification at all times.

(1) for an amount in excess of \$1,500,000 for the difference between the value of the portfolio as invested by Freed and Dean Witter and the foregone appreciation of the shares of Dayton-Hudson stock and her partnerships that she would have sold at later dates pursuant to the Okabena plan;

(2) for an amount in excess of \$1,250,000 in capital gains tax that Claimant was required to pay upon the sale of Dayton-Hudson stock that she would not otherwise have sold;

(3) for an amount in excess of \$50,000 paid in brokerage commissions on the sale of the Dayton-Hudson stock;

(4) for an amount in excess of \$100,000 for the discounts Claimant failed to receive on Dean Witter's services

(5) for an amount in excess of \$50,000 for losses resulting from unauthorized options trading;

(6) for interest on Claimant's damages and an award of attorneys fees as well as any other relief the arbitration panel deems just and appropriate.

Respondents requested that the claims of the Claimant be dismissed as well as an award of their expenses.

#### AWARD

On April 12, 1990, May 10, 1990, May 11, 1990, May 21, 1990, May 22, 1990 June 19, 1990, June 20, 1990, June 26, 1990 and June 27, 1990 in Boston, Massachusetts, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by the Claimant Elizabeth D. Dovydenas on February 29, 1988, by Respondent James M. Freed on August 11, 1988 and not signed by Respondent Dean Witter Reynolds, Inc. as required by Sections 12 and 25 of the Code of Arbitration Procedure. The initial Statement of Claim was filed on April 12, 1988. The arbitration panel, having considered the pleadings, the testimony, the evidence presented at the hearing as well as post-hearing briefs of the parties, has determined in full and final resolution of the issues submitted for determination as follows:

(1) The Claimant's claim for the excess capital gains tax incurred on the sale of the Dayton-Hudson stock is denied.

(2) The Claimant's claims for foregone appreciation of the Dayton-Hudson stock and the partnership interests are denied.

(3) Respondents Dean Witter Reynolds, Inc. and James M. Freed are jointly and severally liable and shall pay to the Claimant Elizabeth D. Dovydenas the sum of Eighty-Seven Thousand Seven Hundred Eighty-Eight Dollars and No Cents (\$87,788.00) for reimbursement of undiscounted commissions together with interest on that amount of Thirty-One Thousand Six Hundred and Three Dollars and No Cents (\$31,603.00) for a total award of One Hundred Nineteen Thousand Three Hundred Ninety-One Dollars and No Cents (\$119,391.00).

(4) All other claims of the Claimant are denied.

(5) The parties shall each bear their respective costs including attorneys fees.

(6) The parties shall share forum fees equally. Pursuant to Section 43 of the Code of Arbitration Procedure, the NASD, Inc. shall retain the \$1,000.00 filing fee previously deposited by the Claimant. The Claimant shall pay to the NASD, Inc. the sum of \$4,000.00 in forum fees, and the Respondents shall pay jointly and severally to the NASD, Inc. the sum of \$5,000 in forum fees for costs of the 20 hearing sessions conducted in this matter.

CONCURRING ARBITRATORS

/s/ \_\_\_\_\_  
Cornelius McAuliffe, Esq.

/s/ \_\_\_\_\_  
Mary Kelleher

/s/ \_\_\_\_\_  
Theodore Turner

Dated this 10th day of August, 1990.