

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

IN THE MATTER OF ARBITRATION
BETWEEN

LAWRENCE E. THOMAS, TRUSTEE OF
THE HARRINGTON CLIFFORD TRUST

Claimants,

vs.

DEAN WITTER REYNOLDS, INC. AND
ET. AL.

Respondents.

NO. 88-01234

CASE SUMMARY

Lawrence E. Thomas, Trustee of the Harrington Clifford Trust (Thomas) alleged as follows:

1. James W. Harrington and his wife Carole A. Harrington ("Settlers") created a Clifford Trust under which Silas Hall Harrington was the beneficiary and Thomas was trustee. S. Erik Johnston ("Johnston") a registered representative for Dean Witter Reynolds Inc. ("Dean Witter") induced the Settlers to include language in the trust instrument which authorized the trustee to open a margin account, invest in option contracts, and short sales.

2. The Trust, opened an account at Dean Witter on or about July 24, 1984, after which Johnston began excessively trading the account in naked put and call options.

3. Johnston made several misrepresentations and omissions regarding the transactions made in the account including but not limited to the fact that he failed to inform Thomas of the risks involved in trading options.

4. Johnston churned the account.

5. Option and margin trading were not suitable for Thomas account in light of the customers investment objectives, financial circumstances, and degree of sophistication.

6. Dean Witter and Albert O'Neal ("O'Neal") failed to properly supervise Johnston. O'Neal was the manager of the branch at which Johnston was employed.

7. The transactions that Johnston made in the Thomas account were unauthorized.

8. That Dean Witter is liable for all of the acts of Johnston relating to the Thomas account.

9. Johnston breached his fiduciary duty to Thomas.

10. Dean Witter and Johnston breached their contract with Thomas and their duty of good faith and fair dealing.

11. The Respondents Johnston, O'Neal, and Dean Witter violated federal and state securities laws, rules of the various self regulatory organizations, the Texas Deceptive Trade practices Act, the Texas Business & Commerce Code - Section 27.01; and engaged in common law fraud.

Respondents Dean Witter and O'Neal alleged a follows:

1. They denied each and every claim of the claimant.

2. Settlers and Thomas were aware of the nature, function, and potential risks of margin and option trading, and based on such understanding included language to provide for such trading in the trust document.

3. James Harrington approved or ratified all investment decisions with respect to the account.

4. There was nothing inherently wrong about placing trust assets in margin and option trading and such type of trading was consistent with the investment objectives communicated by Harrington and Thomas.

(5. Johnston was properly supervised by O'Neal and Dean Witter.

6. The account was handled according to all rules and regulations of the various exchanges and self-regulatory organizations, however claimant has no private cause action under any rules and regulations of any exchanges or any self regulatory organization.

7. Claimant was in control of all trading done in the account and there was no excessive trading of the account.

8. Claimant's claims are barred by the doctrines of estoppel, waiver, laches, and ratification.

9. Claimant's claims are barred by the statute of limitations.

10. O'Neal and Dean Witter acted in good faith.

11. O'Neal and Dean Witter deny any allegations of Thomas regarding any misrepresentations or omissions.

Relief Requested

(Thomas requested actual monetary damages in an amount not less than \$103,440.06, treble damages in the amount equal to three times actual monetary damages, punitive and exemplary damages in an amount equal to three times actual monetary damages, prejudgment and postjudgment interest, reasonable attorneys' fees, expert fees, and costs. Respondents Dean Witter and O'Neal requested that Thomas's claims be dismissed and that they be awarded their attorneys' fees and costs.

Procedural Summary

On April 14, 1988 claimant filed his claim against the Respondents, Dean Witter and Johnston, and then subsequently amended his complaint to include Albert O'Neal. On June 12, 13, and 14, 1989 the undersigned Arbitrators heard the controversy between the parties as set forth in the submissions to arbitration executed by Lawrence E. Thomas on April 13, 1988, and by Judith M. Rosenberg on June 20, 1988, on behalf of Dean Witter. It does not appear that O'Neal executed a submission form, however O'Neal did file an answer on July 5, 1989 and did appear at the hearing and informed NASD staff counsel that he was submitting the matter to this arbitration. Arch B. Gilbert, claimant's counsel, informed the panel that Johnston had filed bankruptcy and that the claimant was not proceeding in the arbitration against Johnston.

(The hearing was held in six sessions at the NASD District offices in Dallas Texas.

AWARD

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

1. Dean Witter is liable to the claimant in the amount of twenty thousand dollars and no cents (\$20,000);

2. O'Neal is liable to the claimant in the amount of five thousand dollars and no cents (\$5,000);

3. Each party shall bear their own respective costs and attorneys' fees;

4. Pursuant to Section 43 of the NASD Code of Arbitration, the NASD shall retain the \$750.00 filing fee previously deposited by the Claimant, and additionally the Claimant shall pay another \$1,500.00 as forum fees. Dean Witter shall pay \$2,250.00 in forum fees. All forum fees shall be payable to the NASD through its staff counsel.

Arbitrators Concurring

S/SRaymond L. Britton, Sr. _____
Presiding Chair

S/SHenry F. Zimmerman _____

S/SEugene Clinton Aldridge, II _____