

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Arbitration Matter Between

DONALD J. AND MARY TARSNEY

## Claimants

y.

DEAN WITTER REYNOLDS, INC.

Respondent

**Case No. 88-02259**

### CASE SUMMARY

Claimants, Donald J. and Mary Tarnsey ("Tarsneys") alleged the following:

1. On or about February 19, 1981 Tarneys met with C. B. Brewster ("Brewster"), who was a registered representative of Dean Witter Reynolds, Inc. ("Dean Witter") (Brewster and Dean Witter are collectively referred to herein as "Respondents"). Tarneys's told Brewster that they were interested investing their savings, however, such investments would have to be low risk and that they knew very little about the stock market;
2. Tarneys transferred \$20,000 to Respondents on February 20, 1981, and subsequently transferred another \$6,100 on September 29, 1981;
3. Respondents purchased unsuitable securities for the Tarneys account;
4. Respondent's churned the Tarneys account;
5. Respondents breached their fiduciary duty to the Tarsneys and engaged in fraud.
6. Respondents made unauthorized trades in Tarsney account;
7. Respondents failed to inform the Tarsneys' of the risks of the trades;

Respondents' alleged:

1. Denied each and every claim of the Tarsneys;
2. Tarsneys were fully informed of the risk of investing in the securities;
3. All transactions made in the account were authorized by the Tarsneys;
4. The transactions engaged in by the Tarsneys were suitable for the Tarsneys given their investment objectives;
5. Tarsneys claims were barred by the doctrines of waiver and estoppel;
6. Tarsneys claims were barred by the statute of limitations.

#### RELIEF REQUESTED

Tarsney's requested relief in the amount of \$26,000, plus attorneys' fees and costs. Respondents requested that all the claims of the Tarsney's be dismissed and that the Respondents be awarded their attorneys' fees and costs.

#### PROCEDURAL SUMMARY

On July 15, 1988, the Tarneys filed their Statement of Claim with the NASD. On July 20, 1989 the undersigned arbitrators heard the controversy in question which had been submitted to the arbitrators pursuant to the Uniform Submission Agreements signed by the Tarsneys on July 11, 1988, by Kathryn S. Reimann on behalf of Dean Witter on September 7, 1988, and by Clarence B. Brewster on August 15, 1988. The hearing was held in two sessions at the Omni Hotel in New Orleans, Louisiana.

#### AWARD

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:

Tarsneys are awarded the following against Dean Witter and C. B. Brewster, jointly and severally:

Eighteen Thousand Dollars and no cents (\$18,000) in damages plus \$2,500 in attorneys' fees and costs.

Pursuant to Section 43 of the NASD's Uniform Code of Arbitration Procedure, Dean Witter is assessed forum fees of \$1,500.00 payable to the NASD through its staff counsel, Tarsneys shall be refunded the \$750.00 previously deposited with the NASD.

Dean Witter's motion to bar the Tarsneys claim based on the statute of limitations and Section 15 of the NASD Code of Arbitration Procedure is hereby denied.

Arbitrators Concurring

Dated: 7-24-89

/S/ Michael E. McGown, Esq.  
Presiding Chair

Dated: 7-25-89

/S/ Clayton J. Borne, Jr.

Dated: 7-25-89

/S/ Leon Edgar Newman

Date Served: 7-31-89