

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In The Matter of The Arbitration Between

HAROLD LUDWIG, TRUSTEE OF THE  
HAROLD LUDWIG COMPANY  
AMENDED AND RESTATED  
PROFIT SHARING TRUST

Claimant(s)

VS.

DEAN WITTER REYNOLDS, INC.  
PAUL W. KINNEY

Respondent(s)

Award

NASD No. 88-02666

SUMMARY OF ISSUES

This case was filed ~~or~~ with the NASD on August 23, 1988. Claimant alleged that Respondents breached their fiduciary duty to him by fraudulently inducing him to invest pension and profit-sharing trust funds in the Dean Witter Reynolds Option Income Trust. Claimant alleged that this fund, a mutual fund which engaged in covered call writing on high-quality common stocks, was unsuitable for the investment objectives of a pension and profit-sharing trust account.

Claimant further alleged he was not informed of the potential risk involved in investing in this product.

Respondents answered that the investment

in the Dean Witter Reynolds Option Income Fund was the only product which lost money in an otherwise profitable portfolio and that this loss is attributable solely to the stock market crash of October, 1987, not to any actions of Respondents. Respondents also asserted that this product was suitable for Claimant in light of his years of investment experience, business acumen, and the financial information he provided to Respondents.

#### DAMAGES AND RELIEF REQUESTED

Claimant requested compensatory damages of \$56,828.00, plus prejudgment interest at the rate of 10%, punitive damages of at least \$100,000.00, attorney's fees and costs.

Respondents requested dismissal of all claims.

DAMAGES AND RELIEF AWARDED

On February 6 & 7, 1990 in Los Angeles California,  
the undersigned arbitrators heard the controversy in 4 sessions between  
the parties as set forth in submissions to arbitration signed by  
Claimant(X) on September 29, 1988, by Dean Witter  
Reynolds on January 31, 1989, and by  
Paul W. Kinney on February 6, 1990.  
~~and by Respondent(s)~~ \_\_\_\_\_

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:

1. The panel finds for Respondents;  
all claims asserted by Claimant are  
dismissed.

2. The parties shall each bear their respective costs including attorneys' fees.

3. In accordance with Section 43 of the National Association of Securities Dealers, Inc (NASD) Code of Arbitration Procedure, the NASD shall retain/refund the \$750<sup>00</sup> filing fee previously deposited by the Claimant as an assessment of forum fees by the arbitrator(s).

OTHER ISSUES

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DATE SERVED: 2/20/90

*Sandra L. Malek* —  
*George M. Wiener*

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WILLIAM C. RICHARDSON

ARBITRATORS DISSENTING

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