

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitrator Between

Robert Shad (Deceased),                      Claimants  
Molly Shad, and Samantha Shad

vs.

Dean Witter Reynolds, Inc.,              Respondents  
Milton Ponitz, and Lee McMahan

AWARD

CASE NO. 88-02676

SUMMARY OF ISSUES

This case was filed with the NASD, Inc. on August 23, 1988. Claimants alleged that the covered writing option program ("CWOP") promoted by Dean Witter Reynolds, Inc. and recommended by their account executive Milton Ponitz was unsuitable to their stated investment objectives of income and preservation of capital, and that branch manager Lee McMahan and DWR failed to adequately supervise the management of Claimant's accounts. Specifically, Claimants alleged that respondents misrepresented the CWOP as a conservative investment strategy that would produce income and then recommended the use of highly speculative strategies such as rolling up and rolling down unexpired call options; that their investments were heavily concentrated in oil and energy related securities; and that an excessive use of margin was used to purchase the underlying securities. Additionally, Claimants alleged that the activity in their accounts was excessive in size and frequency in light of their financial resources and investment goals; that respondents acted with intent to defraud claimants, or with willful and reckless disregard for their interests; that respondents fraudulently failed to disclose material information concerning the use of margin and the need for diversification in their accounts; and breach of fiduciary duty and negligence, in recommending the strategies employed in their accounts.

Respondents denied the allegations and maintained that claimant Robert Shad directed the activity in the accounts and was an experienced investor who had a history of trading options and on margins. Respondents further maintained that the volume and frequency of the transactions in claimants' accounts were consistent with the size of their portfolio and strategy of covered call writing; that Robert Shad knew at all times that the trading in the accounts was speculative and that he participated in the decision-making and trading in the accounts on an informed basis; and that Robert Shad knew from his continuous computation of the profit and losses on the transactions in the accounts that his equity fluctuated and his principal was not guaranteed; and that he was aware that the accounts were exposed to risk or loss by trading on margin, and that margin interest was being calculated on the debit balance of the accounts. Respondents alleged that

the claims are barred by claimants' ratification of the transactions and their failure to mitigate damages.

#### DAMAGES AND RELIEF REQUESTED

Claimant Molly Shad requested damages, as amended at the hearing, in the amount of \$677,382.00 incurred as trading losses, plus interest at 10% from July, 1982; in addition Claimant requested if invested in the Dow Jones in the amount of \$2,397,932.00, or if invested in a Money Market in the amount of \$1,354,764.00.

Claimant Samantha Shad requested damages in the amount of \$42,000.00, as testified by claimants' expert witness at the hearing, plus interest at 10% from July 1982.

Respondents requested dismissal of the claims.

#### DAMAGES AND RELIEF AWARDED

On July 20, 21, and August 28, 29, 30, 31, 1989 the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants Molly Shad on August 8, 1988 and Samantha Shad on August 16, 1988 and by Respondents Dean Witter Reynolds, Inc. on October 27, 1988, Milton Ponitz on October 4, 1988 and Lee McMahan on September 27, 1988. The hearing was held in Los Angeles, California and consisted of twelve hearing sessions. 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. Respondents Dean Witter Reynolds, Inc., Milton Ponitz, and Lee McMahan are hereby jointly and severally liable for and shall pay to Claimant Molly Shad the sum of Six Hundred, Ninety-Seven Thousand, Six Dollars and Zero Cents (\$697,006.00) calculated as follows:

- a. Actual damages in the amount of \$443,222.00; and
- b. Interest at ten percent (10%) for the period of July 1982 to March 1987 in the amount of \$253,784.00.

2. Respondents Dean Witter Reynolds, Inc., Milton Ponitz and Lee McMahan are hereby jointly and severally liable for and shall pay to claimant Samantha Shad the sum of Twenty-Eight Thousand, Three Hundred Seven Dollars and Zero Cents (\$28,307.00) calculated as follows:

- a. Actual damages in the amount of \$18,000; and
- b. Interest at ten percent (10%) for the period of July 1982 to March 1987 in the amount of \$10,307.00.

3. The parties shall each their respective costs including attorney's fees.

4. Pursuant to Section 43 of the National Association of Securities Dealers, Inc. ("NASD") Code of Arbitration Procedure:

a. The NASD shall retain the \$1,000 filing fee previously deposited by the Claimant; and

b. Respondent Dean Witter Reynolds, Inc. is hereby assessed the sum of \$6,000.00 representing forum fees to be paid to the NASD, Inc. directly.

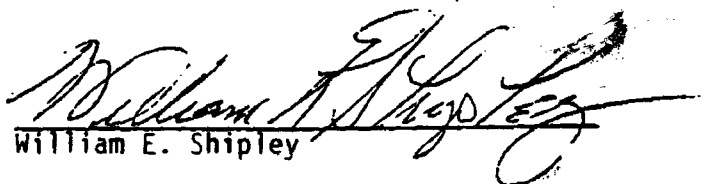
OTHER ISSUES

This claim was originally filed on November 17, 1982 in the Federal District Court in Los Angeles for claims arising under Federal Securities Laws. Claimants' state court action was remanded to arbitration and was stayed pending conclusion of the federal action. In January 1985 the trial of the Federal Claims commenced and the jury returned a verdict in favor of respondents. The Ninth Circuit reversed the District Court judgment and the case was remanded to the District Court for a new trial. The parties then entered into a stipulation which was filed with the District Court on April 22, 1987 that they agreed to submit the state law and federal securities law claims to binding arbitration before the NASD, Inc.

The parties stipulated to the execution and service of this award in counterpart copies.

ARBITRATORS CONCURRING

DATE SERVED: 09/26/89

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William E. Shipley