

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of Arbitration Between

JAMES W. HARRINGTON, JR.

Claimant

v.

DEAN WITTER REYNOLDS, INC.

ALBERT O'NEAL

Respondents

NASD No. 88-02791

CASE SUMMARY

This claim was filed on August 29, 1988 and amended February 23, 1989 and October 23, 1989. The claim originally named S. Erik Johnston "Johnston" as a respondent but his bankruptcy filing resulted in an automatic stay of the proceeding as to him. The Claimant alleged that Dean Witter Reynolds, Inc. acting by and through its account executive Johnston, engaged in unauthorized and excessive trading in his account. The Claimant further alleged that Respondents induced him to enter into margin activity and trading in uncovered put and call options, which were unsuitable for him, without adequately explaining the risks involved therein.

The Claimant stated that Johnston solicited the Claimant to purchase interests in 2 limited partnerships through false and misleading statements as to the quality and nature of said investments. The Claimant also stated that Dean Witter Reynolds, Inc. and Albert O'Neal failed to properly supervise the activities of Johnston.

The claim alleged specific violations of:

1. Section 10(b) of the Securities Exchange Act of 1934 and Rule 10(b)(5) thereunder;
2. Section 33 of the Texas Securities Act;
3. Breach of fiduciary duty;
4. The common law obligation of good faith and fair dealing;
5. The Texas Deceptive Trade Practices Act;
6. Common Law Fraud and the Texas Business & Commerce Code; and
7. Breach of contract.

Date served 1-30-90

Respondents Dean Witter Reynolds, Inc. and O'Neal alleged that Harrington was a knowledgeable, experienced, and sophisticated person and investor. They further alleged the claimant was in control of all trading done in his account and that Respondents made full and fair disclosures of the potential risks of making certain investments. Respondents stated that the investments made were consistent with the Claimant's objectives and that no misrepresentations or misstatements were made to the Claimant.

The Respondents deny that Johnston offered or sold the limited partnerships interests to the claimant and stated that Johnstons' actions with respect to these transactions were taken in his individual capacity and not as an agent or representative of Dean Witter Reynolds, Inc.

The Respondent stated that they properly and adequately supervised Johnston in connection with Harrington's account. Further, the Respondents raised the affirmative defenses of waiver, estoppel and ratification.

#### **RELIEF REQUESTED**

The Claimant asked for the recovery of \$545,246.00 plus treble damages, punitive damages, prejudgment and post judgment interest, attorney fees, expert witness fees and costs.

The Respondents asked that the claims be denied and that they recover their costs.

#### **AWARD**

On November 6, 1989 in Dallas, Texas during a hearing lasting two sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on August 29, 1988 by Claimant and on November 3, 1988 by Judith Rosenberg on behalf of Respondent Dean Witter Reynolds, Inc. Albert O'Neal joined in the answer to the First Amended Statement of Claim and is bound by this decision.

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

1. Respondents Dean Witter Reynolds, Inc. and Albert O'Neal are hereby jointly and severally liable for and shall pay to the Claimant the sum of Two Hundred Ten Thousand Dollars, in cash, inclusive of interest;

2. No punitive damages are awarded;

3. Each party shall bear its own costs and expenses, including attorneys fees; and

4. Pursuant to Section 43(b) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain as forum fees, the \$1,000.00 filing fee previously deposited with the NASD by the Claimant and shall charge an additional \$1,000.00 in forum fees to the Respondents jointly and severally.

BY THE PANEL

S/SMr. James Broome  
Presiding Chair

S/SJames Clarence Paisley

S/SO. Delton Bennett

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

In the Matter of Arbitration Between

**JAMES W. HARRINGTON, JR.**  
Claimant

y.

DEAN WITTER REYNOLDS, INC.  
ALBERT O'NEAL

## Respondents

REPORT OF ARBITRATORS  
NO. 88-02791

During the course of the hearing in the above-referenced matter, the undersigned arbitrators heard testimony and evidence which called into question the adequacy of supervision exercised by Albert O'Neal and Dean Witter Reynolds, Inc. over its representative S. Erik Johnston. We feel that the District Office of the NASD should look into the matter to determine whether the supervisory procedures in place in the Fort Worth Branch of Dean Witter Reynolds, Inc. are sufficient.

**BY THE PANEL**

S/SMr. James Broome  
Presiding Chair

S/SJames Clarence Paisley

**S/SO. Delton Bennett**