

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In The Matter of The Arbitration Between		
Larry Hallee	Claimant	Award
vs.		NASD #88-03250
Dean Witter Reynolds Inc. and Timothy Sweeney	Respondents	

SUMMARY OF ISSUES

Claimant filed the claim on October 18, 1988 and alleged that Respondents made unsuitable recommendations; engaged in fraudulent and bad faith recommendations; failed to execute sell/transfer orders in a timely manner and failed to provide accurate records.

Respondents maintained that Claimant's allegations were not true; that the recommendations made to Claimant were unquestionably conservative and suitable by any standard whatsoever; that the alleged fraudulent statements were never uttered and that the bad faith allegations were also untrue. Respondents further maintained that every single order and instruction from Claimant was handled diligently and professionally, and that the incorrect 1099B statement, occurred through no fault of Dean Witter and was corrected long ago.

DAMAGES AND RELIEF REQUESTED

Claimant requested damages in the amount of \$10,000.00, including punitive damages. Respondents requested dismissal of claim and costs.

DAMAGES AND RELIEF AWARDED

On June 29, 1989 in San Francisco, California, the undersigned arbitrator heard in two sessions the controversy between the parties as set forth in submissions to arbitration signed by Claimant on October 18, 1988, and by Respondent Dean Witter Reynolds Inc. on December 13, 1988, and by Respondent Timothy Sweeney on December 13, 1988. 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. Respondent Dean Witter Reynolds Inc. is liable for and shall pay to Claimant the sum of Six Hundred Thirty-Nine Dollars and Zero Cents (\$639.00).

2. Each and every claim against Respondent Timothy Sweeney is hereby dismissed.

3. The claim for punitive damages is dismissed.

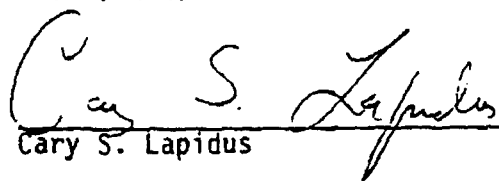
4. The parties shall each bear their respective costs including attorneys' fees.

5. Pursuant to Section 43 of the National Association of Securities Dealers, Inc. (NASD) Code of Arbitration Procedure, the NASD shall refund the \$200.00 filing fee previously deposited by the Claimant.

#### OTHER ISSUES

At the hearing, conducted on June 29, 1989, in San Francisco, California, the undersigned arbitrator ruled that a witness to be called by Dean Witter, Henry Auwinger, must be sequestered until it came time for him to testify. Respondent Dean Witter objected to the sequestration of Mr. Auwinger, claiming that he was acting in the capacity of Respondent Dean Witter's corporate representative at the hearing. The Arbitrator adjourned the hearing to allow Dean Witter an opportunity to select a corporate representative who would not be testifying at the hearing. After a short recess, Dean Witter informed the Arbitrator and the NASD that it was willing to proceed with the arbitration without a corporate representative, although it continued to object to the sequestration of Mr. Auwinger. The hearing reconvened on the afternoon of June 29, 1989 and was completed later that day.

ARBITRATOR CONCURRING

  
Cary S. Lapidus

7/13/89

## REPORT OF ARBITRATOR

The Arbitrator having heard the testimony of the witnesses and having reviewed the Statement of Claim, Answer, Claimant's Statement of Fact and Arguments, and the other papers submitted by the parties hereby issues the following report.

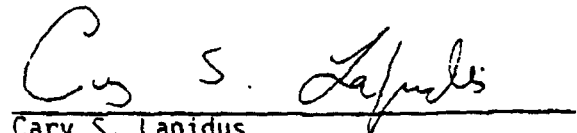
Claimant has not met his burden of proof with respect to any of the allegations of fraud on the part of Dean Witter or Sweeney. The Arbitrator finds that Sweeney did not make misrepresentations of facts concerning the investments he recommended to the Claimant. The Arbitrator further finds that the investments recommended by Sweeney and purchased by Claimant were suitable in light of Claimant's financial situation and investment objectives. Moreover, the Arbitrator finds that Sweeney did not act in bad faith by not alerting Claimant of a downward trend in the market prior to the October 1987 market crash.

The Arbitrator finds in favor of Claimant with respect to the delays in executing his orders in October 1987 to sell the mutual fund shares in his account. The delays in executing these orders are solely the responsibility of Dean Witter and not Sweeney. The Claimant's damage figures presented at the hearing were not contested. Therefore, the Arbitrator finds that Dean Witter is liable to Claimant in the amount six hundred thirty nine dollars (\$639.00).

The Arbitrator finds that Claimant has suffered no damages with respect to his claim that Dean Witter failed to provide timely and accurate tax records.

In sum, the Arbitrator rules as follows:

- 1) Claimant shall recover six hundred thirty nine dollars (\$639.00) from Respondent Dean Witter Reynolds, Inc.
- 2) Claimant shall recover nothing (\$0.00) from Respondent Sweeney.
- 3) Each side is to bear its own costs.

  
Cary S. Lapidus  
Arbitrator

7/13/89