

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between )  
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DOROTHY F. GILBERT, )  
 ) Claimant. )  
 ) Case #88-03621  
vs. ) Award  
 )  
DEAN WITTER REYNOLDS, INC., and )  
 )  
HERVE LEIGEOIS. )  
 ) Respondents. )  
 )  
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Heard before the members of the Arbitration Panel:

Nancy C. Wear, Esq.  
Eduardo J. Palacio, Esq.  
S. Richard Savage

CASE SUMMARY

This claim was filed with the NASD, Inc. on November 11, 1988. The hearing was conducted in Fort Lauderdale, Florida on September 7, December 11 and 18, 1989, with a total of four sessions.

Claimant, Dorothy F. Gilbert ("Gilbert"), alleged that Respondents, Dean Witter Reynolds, Inc. ("DWR") and Herve Leigeois ("Leigeois"), made misrepresentations of material facts to induce Claimant to invest in options; that Gilbert was inexperienced and unsophisticated in securities investing; that options trading was unsuitable for Claimant; that Respondents also recommended unsuitable investments in speculative stocks; that Respondents failed to disclose the risks and effects of trading on margin; that Respondents' actions constituted violations of NYSE Rule 405, NASD Rules of Fair Practice, and Section 10(b) of the Securities Exchange Act; constituted breach of contract; breach of fiduciary duties; failure to supervise; and, caused Claimant a substantial loss.

Respondents denied all allegations of wrongdoing; alleged that Gilbert rather than Respondents wished to invest in options; that Gilbert was an experienced investor; that Respondents attempted to dissuade Gilbert and advised that options were inconsistent with her account equity and objectives; that Gilbert convinced Respondents that she was financially suitable for options trading; that Gilbert refused to follow Respondents' advice to mitigate her damages; and, that all risks were fully disclosed to the Claimant.

RELIEF REQUESTED

Claimant requested damages in the amount of \$76,000.00; interest at the legal rate of 12% from July 1987 to date of hearing in the amount of \$21,280.00; punitive damages; reasonable attorney's fees; costs; and other relief. Respondents requested dismissal and attorney's fees.

## AWARD

On September 7, December 11 and 18, 1989, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on November 9, 1988; by Respondent DWR on December 15, 1989; and, not signed by Respondent Leigeois as required by Section 12(a) of the Code. 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 parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD, Inc.
2. Respondents, DWR and Leigeois, are hereby liable, jointly and severally, and shall pay to the Claimant the amount of Twenty Three Thousand Two Hundred Seventy Five and 00/100 (\$23,275.00) Dollars.
3. The parties' requests for attorneys' fees are hereby denied.
4. Claimant's request for punitive damages is hereby denied.
5. Pursuant to Section 43 of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of Three Thousand and 00/100 (\$3,000.00) Dollars (four sessions x \$750.00). The Claimant is hereby assessed forum fees in the amount of Fifteen Hundred and 00/100 (\$1,500.00) Dollars for which the NASD, Inc. will retain the Seven Hundred Fifty (\$750.00) Dollar filing fee previously deposited by the Claimant in partial satisfaction thereof. The Respondents, DWR and Leigeois, are hereby assessed forum fees, jointly and severally, in the amount of Fifteen Hundred and 00/100 (\$1,500.00) Dollars payable to the National Association of Securities Dealers, Inc.
6. Pursuant to Section 30 of the Code, the Panel has assessed postponement fees, as previously invoiced, and payable to the NASD, Inc., as follows:
  - \$34.00 from the Claimant;
  - \$33.00 from DWR; and,
  - \$33.00 from Leigeois.
7. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

## OTHER ISSUES

None.

## ARBITRATORS CONCURRING

Nancy C. Wear Esq., Eduardo J. Palacio Esq. and S. Richard Savage.

Dated: January 18, 1990