

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
SALLY SUSSMAN,)
Claimant,)
vs.) Case #89-00432
DEAN WITTER REYNOLDS and) Award
DAVID E. JELONEK,)
Respondents.)

Heard before the members of the Arbitration Panel:

Alexander Eltman, Esq.
Judy Avey
Leslie Bishop

CASE SUMMARY

This claim was filed with the NASD, Inc. on February 13, 1989. The hearing was conducted in Fort Lauderdale, Florida on April 9th and 10th, 1990 with a total of five (5) sessions.

Claimant, Sally Sussman ("Sussman") alleged that she was an elderly, unsophisticated investor who sought income; that Respondents, Dean Witter Reynolds, Inc. ("DWR") and David E. Jelonek ("Jelonek"), dissuaded Sussman from investing in GNMA's and persuaded her to invest in mutual funds, an initial public offering of a closed-end investment trust, equity securities, and a stock fund; made misrepresentations of material facts and omitted to state material facts; that the investments were unsuitable in light of Claimant's stated investment objectives; that many of the trades were unauthorized; that Respondents utilized margin in violation of Claimant's investment needs; that Respondents' acts constituted fraud; gross negligence; negligence; breach of fiduciary duty; negligent supervision; and, violation of Section 317.301, Florida Statutes.

Respondents denied all allegations of wrongdoing; alleged that Claimant sought growth with prudent risk and relative safety; that Claimant understood and authorized use of margin that all investments were suitable; and, that Claimant fully understood the risks and authorized all trades in her account.

RELIEF REQUESTED

Claimant requested damages in the amount of \$23,133.89, prejudgment interest at the legal rate of 12% per annum in the amount of \$6,940.16, attorney's fees, punitive damages in the amount of \$200,000.00 and costs.

Respondent requested dismissal, attorney's fees and costs.

AWARD

On April 9th and 10th, 1990, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on January 20, 1989, and by Respondents, DWR and Jelonek, on April 9, 1990. 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 Jelonek, are found not liable to the Claimant and, therefore, all claims against them are hereby dismissed.
3. Claimant's requests for punitive damages and attorney's fees are hereby denied.
4. Respondents' request for attorney's fees 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 Seven Hundred Fifty and 00/100 (\$3,750.00) Dollars (\$750.00 x five sessions). Claimant is hereby assessed forum fees in the amount of Eighteen Hundred Seventy Five and 00/100 (\$1,875.00) Dollars and the Respondents, DWR and Jelonek, are hereby assessed forum fees, jointly and severally, in the amount of Eighteen Hundred Seventy Five and 00/100 (\$1,875.00) Dollars payable to the National Association of Securities Dealers, Inc. The NASD, Inc. shall retain the Seven Hundred Fifty and 00/100 (\$750.00) Dollar filing fee previously deposited by the Claimant in partial satisfaction of the assessment against the Claimant.
6. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

OTHER ISSUES

None.

ARBITRATORS CONCURRING

Alexander Eltman Esq., Judy Avey and Leslie Bishop.

Received this 4th day of May 1990.