

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Dean Witter Reynolds, Inc.

89-01614

Name of Respondent(s)

Otto L. Dittmar
Derrill L. Mannle

Heard before the <arbitrator/members of the Arbitration Panel>:

Name	Public/Industry
Alan M. Greene, Esq.	Public/Chairman
Mauricio Kohn	Public/Panelist
Eugene F. Leich	Industry/Panelist

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on June 1, 1989. Claimant, Dean Witter Reynolds, Inc., ("Dean Witter"), alleged that Respondent, Otto L. Dittmar, ("Dittmar"), maintained a securities trading account at Dean Witter since 1976, and that he has traded on margin since opening the account. Claimant claimed that on Wednesday, October 21, 1987, stock exchange margin calls resulted in an immediate liquidation of Dittmar's positions. After liquidation, Dean Witter claimed there still existed a deficit balance in the account which Claimant is seeking to recover.

Respondent, Otto L. Dittmar, asserted a counterclaim against Dean Witter and a Third Party Claim against Derrill Mannle, ("Mannle"), his account representative, in which he contended among other things, that Dean Witter and Mannle violated provisions of the federal and state securities laws and were otherwise negligent in their handling of his account and dealings with him. In particular, Dittmar contended that his account was highly leveraged and over-concentrated in Zenith Laboratories, ("Zenith"), a highly speculative pharmaceutical stock, and that Mannle and Dean Witter failed to properly advise him to diversify and decrease his outstanding margin balance.

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Dittmar contended that Mannle failed to disclose that Mannle, who was also heavily invested in Zenith Laboratories, sold out virtually all of his zenith in July-August, 1986, and discouraged Dittmar from doing the same when Dittmar made inquiries about selling the stock and reducing his margin balance. Dittmar claims that had he known of Mannle's sell-out, he would have sold his own zenith stock at a substantial profit. Finally, Dittmar contended that had Dean Witter and Mannle not discouraged him from selling off certain other securities to reduce his margin deficit at an earlier date in October of 1987, he would have avoided the deficit and still had an account balance in excess of \$300,000.00. Dean Witter and Mannle denied the Counterclaim and contended that among other things, that Dittmar was an experienced and sophisticated investor, who made and lost paper profits in the millions of dollars through brokerage accounts at Dean Witter and elsewhere. They contended that Dittmar was given full disclosure on a daily basis of all material facts relative to Zenith, and that although Mannle disclosed that he had sold some Zenith stock, he had no obligation to disclose to Dittmar the full extent of his transactions in Zenith.

RELIEF REQUESTED

Claimant requested an award in the amount of \$95,821.99 for the net deficit balance, which sum includes margin interest through January 31, 1991 plus costs and attorneys' fees.

Respondent, Dittmar requested an award in the amount of anywhere from \$300,000.00 to \$2 million in damages, on alternative theories as to when he should have liquidated his Zenith position or other securities in his account plus costs and attorneys' fees.

AWARD

On March 14th, March 15th, March 18th, March 19th and March 26th 1991 in a hearing lasting ten (10) sessions, the undersigned arbitrators heard the controversy between the Parties as set forth in submissions to arbitration signed by Claimant, Dean Witter Reynolds, Inc. on April 14, 1989 and by Respondent, Otto L. Dittmar on August 16, 1990.

After considering the pleadings, the testimony, and the evidence presented at the hearing, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

<The Parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award 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.>

1. Respondent, Otto L. Dittmar, shall pay to Claimant, Dean Witter Reynolds, Inc., the sum of Thirty Five Thousand Dollars and No Cents (\$35,000.00);

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2. The Panel has determined that there is no cause of action on Otto L. Dittmar's Counterclaim against Dean Witter Reynolds, Inc. and that there is no cause of action on Otto L. Dittmar's Third Party Claim against Derrill L. Mannie;

3. The Parties shall each bear their respective costs including attorneys' fees;

4. Pursuant to Section 43 of the Code of Arbitration Procedure the NASD, Inc. shall retain the \$1,000.00 and the \$1,800.00 filing fees previously deposited by the Claimant and Counterclaimant, respectively,

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

Claimant, Dean Witter Reynolds, Inc., is assessed forum fees in the amount of \$7,600.00;

Respondent and Counterclaimant, Otto L. Dittmar, is assessed forum fees in the amount of \$7,600.00;

Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrator(s) Signature

/s/

Alan M. Greene, Esq.
(Public/Chairman)

/s/

Mauricio Kohn
(Public/Panelist)

/s/

Eugene Leich
(Industry/Panelist)

Date of Decision: _____

DATED BY NASD
MAY 17, 1991