

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Dean Witter Reynolds, Inc. Claimant

vs.

Edward Karesky Respondent

AWARD

CASE NO. 89-01677

Heard Before the Members of the Arbitration Panel:

A. James Miranti
Lewis C. Brown
David N. Mahler

SUMMARY OF ISSUES

This case was filed on June 7, 1989. Claimant alleged that Respondent Edward Karesky ("Karesky") was employed by Dean Witter Reynolds, Inc. ("Dean Witter") as an account executive and that Respondent made several unauthorized trades in the accounts of two of his clients. Claimant alleged that payments were made to the clients because Karesky had made unauthorized and unsuitable trades. Claimant alleged that it is undisputed that the trades were unauthorized, that Karesky's actions were wilful and malicious and breached his fiduciary duty, and that he is liable to Claimant for the \$57,410.69 it paid in settlement to the clients. The trades involved were the purchase of XMI index options. Mr. Karesky did not file a Statement of Answer.

DAMAGES AND RELIEF REQUESTED

Claimant requested an award against Karesky of: 1) \$57,410.69, together with prejudgment interest at the rate of 10% per annum from April 1, 1989; 2) a determination that Karesky's actions amounted to a wilful and malicious injury to his clients' property, and that Karesky breached his fiduciary duties owed to his clients; 3) for Dean Witter's cost of suit, including a reasonable attorney's fees; and 4) for such other and further relief as may be deemed appropriate.

DAMAGES AND RELIEF AWARDED

On March 1, 1990, in San Diego, California, the arbitrators heard the controversy in one session between the parties as set forth in the submission to arbitration signed by Claimant on May 16, 1989. Respondent did not consent to signing a submission agreement, but appeared at the hearing and is subject to the jurisdiction of the National Association of Securities Dealers, Inc. ("NASD") pursuant to Section 8 of the Code of Arbitration Procedure. 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 is liable for and shall pay to Claimant the sum of Fifty-Seven Thousand, Four Hundred Ten Dollars and Sixty-Nine Cents (\$57,410.69), plus interest in the amount of Five Thousand, Two Hundred Sixty-Two Dollars and Sixty-Four Cents (\$5,262.64).

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

3. In accordance with Section 43 of the NASD Code of Arbitration Procedure, the NASD shall retain the \$750.00 filing fee previously deposited by the Claimant as an assessment of forum fees by the arbitrators. Respondent is liable for and shall reimburse Claimant said filing fee.

DATE SERVED: 03/20/90