



Arbitration

National Association of
Securities Dealers, Inc.
One East Broward Boulevard
Suite 1000
Ft. Lauderdale, Florida 33301
(305) 522-7391

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between:)

Name of Claimant(s))

Jack Brown)

Name of Respondent(s))

Dean Witter Reynolds, Inc.)

Robert Steinlauf and)

Richard Ten Eyck)

CASE #89-02698

Heard before the members of the Arbitration Panel:

Casey W. Mills, Esq.
Harry Polansky
Samson Silberman

CASE SUMMARY

This claim was filed with the National Association of Securities, Inc. (NASD) on September 27, 1989. The hearing was conducted in Fort Lauderdale, Florida on October 9, 10, 18 and 26, 1990, with a total of eight (8) sessions.

Claimant, Jack Brown ("Brown"), alleged that Respondents, Dean Witter Reynolds, Inc. ("Dean Witter"), Robert Steinlauf ("Steinlauf"), and Richard Ten Eyck ("Ten Eyck"), were liable for violating Section 10(b) and Rule 10b-5 of the Securities Exchange Act; violating Section 12(2) of the Securities Act; violating Sections 517.211 and 517.301 of the Florida Statutes; breach of fiduciary duty; negligence; and common law fraud. Claimant alleged that Respondents fraudulently, intentionally or recklessly omitted or misrepresented certain facts relating to certain stocks.

Respondents denied liability and asserted affirmative defenses including: failure to allege facts or circumstances constituting a violation of Section 517.301 of the Florida Statutes or to allege misrepresentations of existing material fact; failure to allege that Respondents did not exercise reasonable care; failure to allege scienter, material misrepresentations, reliance upon such representations, falsity of such representations, Claimant's due diligence or proximate causation.

Respondents further stated that the transactions were suitable for Claimant; estoppel; that Claimant had ample opportunity to understand the agreements and transactions involved; waiver; ratification; laches; acquiescence; failure to mitigate damages; that any loss was not caused by Respondents; Claimant is not entitled to the measure of damages sought; Respondents did not control Claimant's accounts; Claimant failed to exercise due diligence; the trading activity conformed to Claimant's investment objectives; comparative negligence; that punitive damages and attorney's fees are not recoverable under some of Claimant's claims; Respondents acted in good faith and did not breach any duty; Claimant was a sophisticated investor; that any statements or omissions did not cause Claimant damage; and Claimant did not rely and was not entitled to rely, on such statements or omissions.

RELIEF REQUESTED

Claimant requested damages in the amount of \$166,000.00, plus interest, punitive damages, costs and attorney's fees.

Respondents requested dismissal of the claim.

AWARD

On October 9, 10, 18 and 26, 1990, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on September 22, 1989, and by Respondents, Dean Witter, on February 13, 1990, and Steinlauf and Ten Eyck on February 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.
2. Respondents, Dean Witter and Steinlauf, are found liable, jointly and severally, and shall pay to the Claimant the amount of Forty One Thousand Two Hundred Sixty Seven and 00/100 (\$41,267.00) Dollars.
3. Claimant's requests for attorney's fees and punitive damages are denied.

4. Pursuant to Section 43 of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of Eight Thousand and 00/100 (\$8,000.00) Dollars (8 sessions x \$1,000.00 per session). Claimant is hereby assessed Four Thousand and 00/100 (\$4,000.00) Dollars for which the National Association of Securities Dealers shall retain the One Thousand and 00/100 (\$1,000.00) Dollars previously deposited in partial satisfaction thereof. Respondents, Dean Witter and Steinlauf, are hereby assessed Four Thousand and 00/100 (\$4,000.00) Dollars, jointly and severally, payable to the NASD, Inc.

5. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding (including attorney's fees).

OTHER ISSUES

Claimant withdrew, with prejudice, his claim against Respondent, Ten Eyck at the time of the hearing and, therefore, the claims against this Respondent are dismissed.

ARBITRATORS CONCURRING

/s/
Harry Polarsky

/s/
Samson Silberman

ARBITRATOR DISSENTING

Arbitrator, Casey W. Mills, dissents only as to paragraph #2 of the Award and concurs as to the remainder of the Award.

/s/
Casey W. Mills, Esq.

Dated: November 26, 1990