

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

John & Bonnie Hall

89-03269

Name of Respondent(s)

Dean Witter Reynolds, Inc.  
Rodney C. Gott

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CASE SUMMARY

In a statement of claim filed with the NASD on or about November 21, 1989, Claimants John E. and Bonnie J. Hall ("the Halls") alleged that they were unsophisticated investors who had little experience or knowledge regarding the risks inherent in investing in securities or trading in a margin account. The Halls alleged that they retained Robert Peisner as their investment advisor to provide and implement an investment plan for the Hall's retirement. Peisner recommended that the Hall's contact Respondent Rodney C. Gott, Jr. ("Gott"). The Halls alleged that Respondents Dean Witter Reynolds, Inc. ("Dean Witter") and Gott, failed to inquire into the Halls investment objectives and that corporate bonds were the primary securities traded in the Hall's accounts. The Halls subsequently learned from Gott that a Mr. Ehrhart was involved in the trading of their account.

The Halls asserted that the conduct of Dean Witter and Gott violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10(b)(5) promulgated thereunder; that their account was churned; that Dean Witter and Gott breached a fiduciary duty owed the Halls; that Dean Witter and Gott aided and abetted the fraudulent acts of Peisner and Ehrhart; that Dean Witter was liable for Gott's actions under the doctrine of respondent superior and that Dean Witter was liable for Gott's conduct as a controlling person pursuant to Section 20 of the Securities Exchange Act of 1934.

Dean Witter and Gott, alleged in their joint statement of answer filed with the NASD on or about February 13, 1990, that in early January 1984, John Hall learned through his friend Robert Peisner that David Ehrhart had implemented a bond trading program and acted as an investment advisor to several clients. Dean Witter and Gott alleged that because Ehrhart was to make all the investment decisions in the Hall's account, Dean Witter required the Halls to execute a trading authorization form that authorized Ehrhart to trade for the Halls. Dean Witter and Gott alleged that Gott told the Halls that all investment decisions were made exclusively by David Ehrhart and that their portfolio should be discussed with him alone. Dean Witter and Gott also alleged that the Halls were on notice as early as February 1984 that all trades were unsolicited because Gott was not recommending or soliciting any trades in the Hall's account.

Dean Witter and Gott alleged that the losses were not the result of any representations or omissions made by Gott but were the result of investment decisions made by the Hall's chosen advisor David Ehrhart. Additionally, Dean Witter and Gott alleged that the churning claim was unmeritorious because Gott did not control the account. Lastly, Dean Witter and Gott denied liability on the breach of fiduciary duty charge because they alleged Gott was merely an order taker.

Dean Witter and Gott asserted the affirmative defenses of waiver and estoppel, that the Halls failed to mitigate any alleged damages and that the claims were time barred by the applicable statute of limitations.

#### RELIEF REQUESTED

The Halls sought damages of \$117,493.00, plus costs of this action. Dean Witter and Gott requested dismissal of the claim on its merits.

#### OTHER ISSUES

The parties agreed that the arbitrators could execute counterpart copies of the award and that the NASD could serve a conformed copy of the award on the parties.

89-3269

AWARD

On Thursday, October 11, 1990 in Chicago, Illinois during a hearing lasting two sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on November 15, 1989 by John E. and Bonnie J. Hall and on February 9, 1990 by Richard Rogoff on behalf of Respondent Dean Witter Reynolds, Inc. Respondent Gott did not sign a submission to arbitration but appeared at the hearing and testified. Additionally, Gott filed a joint answer with Dean Witter and is obligated to arbitrate the instant dispute pursuant to Section 12 of the NASD Code. Accordingly, Gott is subject to the jurisdiction of the undersigned panel and will be bound by the panel's decision on all matters submitted for determination.

1. The claim of the Halls asserted against Gott and Dean Witter shall be and is hereby denied and dismissed in its entirety;

2. The parties shall each bear their respective costs, expenses and attorney's fees incurred in this matter; and

3. Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the NASD shall retain the \$750.00 filing fee deposited with the NASD by the Halls. Dean Witter is assessed and shall pay to the NASD as additional forum fees, the sum of \$750.00

Arbitrator(s) Signature

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Barry E. Simon, Esq.

Dated: \_\_\_\_\_

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John Fennig, Esq.

Dated: \_\_\_\_\_

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Frederic M. Rizzo

Dated: 11-9-90

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Arbitrator(s) Signature

  
Barry E. Simon, Esq.

Dated: November 5, 1990

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John Fennig, Esq.

Dated: \_\_\_\_\_

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Frederic M. Rizzo

Dated: \_\_\_\_\_

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Barry E. Simon, Esq.

John Fennig, Esq.

Frederic M. Rizzo

Dated: \_\_\_\_\_

Dated: Nov. 5, 1990

Dated: \_\_\_\_\_