

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between	)	
	)	
CRICKET RICHMOND,	)	
	)	
vs.	)	Case #89-03333
	)	Award
DEAN WITTER REYNOLDS, INC.,	)	
EASTER KRAMER GROUP SECURITIES, INC.	)	
and ARTHUR F. SERIO,	)	
	)	
	)	Respondents.
	)	

Heard before the members of the Arbitration Panel:

Myron Dunay, Esq.  
Arnold Sarrow  
Charles P. Johnson Jr., Esq.

CASE SUMMARY

This claim was filed with the NASD, Inc. on November 28, 1989. The hearing was conducted in Fort Lauderdale, Florida on August 1, 1990 with a total of two sessions.

Claimant, Cricket Richmond ("Richmond"), alleged that Respondent, Dean Witter Reynolds, Inc. ("DWR"), through its authorized agent Respondent, Arthur F. Serio ("Serio"), made transfers between mutual funds creating unnecessary sales credits and commissions; made investments in insurance policies and a limited partnership which were unsuitable for Claimant in light of her stated objectives of income and moderate growth; and, made unauthorized trades in common stocks. Claimant alleged that Serio used his close personal relationship with her to influence her and take over her account. Claimant further alleged that Respondents, Easter Kramer Group Securities, Inc. ("EKG") and Serio, made unauthorized trades in penny stocks and an index option trust which were unsuitable in light of Claimant's investment objectives; that all Respondents are liable for fraud, breach of fiduciary duties, negligence, and violated Federal Securities laws; and, that DWR and EKG are liable for negligent supervision.

In separate Answers, Serio and DWR denied all allegations of wrongdoing; alleged that Claimant was a knowledgeable and sophisticated investor whose primary goal was capital appreciation; that Claimant authorized all trades; and, that all transactions were suitable for Claimant. DWR asserted the affirmative defenses of: suitability; authorization; waiver; estoppel; ratification; good faith; market conditions; due diligence; and, failure to State a Claim.

EKG failed to file an Answer or present any defenses in writing or at the hearing of this matter.

### RELIEF REQUESTED

Claimant requested damages in the amount of \$125,488.53, interest, and \$50,000.00 in punitive damages from DWR; damages in the amount of \$39,621.00, interest, and \$50,000.00 in punitive damages from EKG and Serio, jointly and severally.

Respondents, DWR and Serio, requested dismissal and costs.

Respondent, EKG, failed to appear or defend this matter.

### AWARD

On August 1, 1990, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on October 18, 1989, and by Respondents, DWR on February 15, 1990 and Serio on December 19, 1989, and not signed by Respondent EKG as required by Sections 1, 12 and 25 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. The parties who were present 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. Respondent, DWR, is found not liable to the Claimant and, therefore, all claims against it are hereby dismissed.
3. Respondents, EKG and Serio, are found liable, jointly and severally, for common law fraud and shall pay to Claimant the amount of Forty Thousand Sixty Three and 00/100 (\$40,063.00) Dollars plus interest at the legal rate of 12% per annum for two years in the amount of Nine Thousand Six Hundred and 00/100 (\$9,600.00) Dollars for a total due to the Claimant in the amount of Forty Nine Thousand Six Hundred Sixty Three and 00/100 (\$49,663.00) Dollars.
4. Respondents, EKG and Serio, are found liable, jointly and severally, and shall pay to the Claimant the further amount of Three Thousand Seven Hundred and 00/100 (\$3,700.00) Dollars for attorney's fees based upon the finding of fraud.
5. Respondents, EKG and Serio, are found liable, jointly and severally, and shall pay to the Claimant the further amount of Fifteen Hundred and 00/100 (\$1,500.00) Dollars for costs (expert witness fees).
6. Claimant's request for punitive damages are denied.

7. Respondent, DWR's request for attorney's fees is denied.
8. Pursuant to Section 43 of the Code of Arbitration Procedure, Respondents, EKG and Serio, are hereby assessed forum fees, jointly and severally, in the amount of Fifteen Hundred and 00/100 (\$1,300.00) Dollars (\$750 x two sessions) of which Seven Hundred Fifty and 00/100 (\$750.00) Dollars shall be paid directly to Claimant and Seven Hundred Fifty and 00/100 (\$750.00) Dollars shall be paid to the NASD, Inc. The National Association of Securities Dealers, Inc. shall retain the Seven Hundred Fifty and 00/100 (\$750.00) Dollar filing fee previously deposited by the Claimant.
9. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

#### OTHER ISSUES

The Panel finds that Respondent EKG received adequate service of the Claim and due notice of the hearing in this matter, as demonstrated by the record in this case based upon the contents of the NASD file containing certified mail receipts from the firm's Boca Raton address. Therefore, the Panel finds that EKG is subject to the jurisdiction of the NASD and this Panel as if it had entered an appearance in this matter pursuant to Section 29 of the Code of Arbitration Procedure.

#### ARBITRATORS CONCURRING

Myron Dunay Esq., Arnold Sarrow and Charles P. Johnson Jr., Esq.

Received this 8th day of August, 1990.