

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

William Attra

Claimant

90-00190

and

Dean Witter Reynolds, Inc.,
Oppenheimer & Co., and
Ken Harb

Respondents

REPRESENTATION OF PARTIES

Claimant was represented by Dennis Taylor of Riddle & Associates, Houston, Texas. Respondents Dean Witter and Ken Harb were represented by Curt Mueller of Dean Witter Reynolds, Inc., San Francisco, California. Respondent Oppenheimer and Co., Inc. was represented by Eugene Small of Oppenheimer & Co., New York, New York.

CASE SUMMARY

In an Amended Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about October 23, 1990, submitted in lieu of the original Statement of Claim which was filed on or about January 17, 1990, the Claimant William Attra ("Attra") alleged that Respondent Ken Harb ("Harb") purchased unsuitable speculative securities for Attra's two (2) retirement accounts, failed to disclose and /or misrepresented the significant investment risk to Attra, materially and knowingly misrepresented the returns which could be generated in Attra's accounts, failed to employ a stop loss strategy in the accounts, made excessive trades in Attra's accounts, continued to recommend purchases of a speculative security for the account, and induced Attra to transfer his accounts to Oppenheimer & Co. by falsely representing that Oppenheimer & Co. would reimburse Attra for all transfer expenses.

Claimant alleged that Respondents Dean Witter Reynolds, Inc. ("Dean Witter") and Oppenheimer & Co., Inc. ("OPCO") were jointly and severally liable in failing to supervise the activities of their account executive, Harb. The accounts at issue are Attra's IRA Rollover Account and Attra's Defined Pension Benefit Plan Account in which Harb allegedly made unsuitable

purchases. Attra alleged that a few of the options purchased were Decision Data Computer, Am Healthcare Management, Technical Tape, Digitech, Consoco, ICH, Foothill, and Cooper Development.

Respondent Oppenheimer & Co., Inc. ("OPCO") and to a limited extent, Respondent Ken Harb, filed a Statement of Answer on or about April 26, 1990 with the NASD and denied the allegations set forth in the Statement of Claim, more specifically, the Churning claim, the Suitability claim, and the Misrepresentation claim. OPCO alleged that they were not liable for Harb's actions during the time Harb was broker for Dean Witter.

Respondents Dean Witter Reynolds and Ken Harb filed a joint Statement of Answer with the NASD on or about April 23, 1990, and denied the allegations set forth in the Statement of Claim, more specifically, the Churning claim, the Suitability claim, and the Misrepresentation claim. Dean Witter and Harb also requested that Attra not be awarded punitive damages. Dean Witter and Harb asserted defenses of Waiver and Estoppel, Comparative Negligence and Assumption of the Risk.

RELIEF REQUESTED

Claimant requested damages of Two Hundred One Thousand Four Hundred One Dollars and No Cents (\$201,401.00) against Harb, Dean Witter, and Opco jointly and severally. The damages included IRA Account losses of \$27,170, Defined Benefit Plan Account losses of \$61,481, Refund of Estimated Commissions Charged to Accounts at \$35,000, Estimated Interest at 10% APR for three years of \$30,000, estimated Attorney's Fees of \$12,000, Refund of the \$750 Filing Fee, and Punitive Damages of \$35,000.

Respondent Oppenheimer requested that Claimant's claims be dismissed in their entirety and that costs be assessed fully against Claimant.

Respondents Dean Witter Reynolds, Inc. and Ken Harb requested that the award be for the Respondents with Attorney's Fees and costs assessed against Claimant.

OTHER ISSUES

Respondents Dean Witter Reynolds, Inc. and Ken Harb filed a Motion To Strike Claimant's request for the Thirty Five Thousand Dollars and No Cents (\$35,000.00) commission refund in Claimant's Amended Statement of Claim which motion was taken under advisement by the panel. The claim was later dismissed in its entirety.

PROCEDURAL MATTERS

On August 19, 1991 and August 20, 1991 in Houston, Texas during a hearing lasting a total of four (4) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on or about January 17, 1990 by Claimant William Attra, on or about April 23, 1990 by Larry R. Meyer on behalf of Respondent Dean Witter Reynolds, Inc., and on or about April 26, 1990 by Eugene Small on behalf of Respondent Oppenheimer & Co., Inc.

Respondent Ken Harb did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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 original(s) remain on file with the NASD.

AWARD

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. The claim shall be and hereby is dismissed in its entirety;
2. The NASD shall retain the claim filing fee of Two Hundred Dollars and No Cents (\$200) and the hearing session deposit of Five Hundred Fifty Dollars and No Cents (\$550) previously deposited by the Claimant;
3. Respondent Oppenheimer shall be and hereby is liable for and shall pay to the NASD Three Hundred Dollars and No Cents (\$300) for the Pre-Hearing Conference;
4. Respondent Oppenheimer shall also be, and hereby is liable for and shall pay to the NASD forum fees in the amount of One Thousand Two Hundred Twenty Five Dollars and No Cents (\$1225);

5. Respondent Dean Witter shall be and hereby is liable for and shall pay to the NASD forum fees in the amount of One Thousand Two Hundred Twenty Five Dollars and No Cents (\$1225);

6. Each party shall bear their own attorney fees and expenses.

Dated:

9-8-91

9-9-91

Alan R. Crain, Jr. Esq.
Presiding Chair
Public Arbitrator

Felix L. Nigh
Felix L. Nigh, CPL
Public Arbitrator

Thomas H. Vann
Industry Arbitrator

5. Respondent Dean Witter shall be and hereby is liable for and shall pay to the NASD forum fees in the amount of One Thousand Two Hundred Twenty Five Dollars and No Cents (\$1225);
6. Each party shall bear their own attorney fees and expenses.

Dated:

Alan R. Crain, Jr. Esq.
Presiding Chair
Public Arbitrator

Felix L. Nigh, CPL
Public Arbitrator

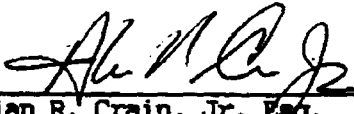
Sept. 6, 1991

Thomas H. Vann
Thomas H. Vann
Industry Arbitrator

5. Respondent Dean Witter shall be and hereby is liable for and shall pay to the NASD forum fees in the amount of One Thousand Two Hundred Twenty Five Dollars and No Cents (\$1225);
6. Each party shall bear their own attorney fees and expenses.

Dated:

Sept 9, 1991



Alan R. Crain, Jr. Esq.
Presiding Chair
Public Arbitrator

Felix L. Nigh, CPL
Public Arbitrator

Thomas H. Vann
Industry Arbitrator