

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)	
Russell Hawley)	
Claimant)	
vs.)	AWARD
)	NASD #90-00326
Dean Witter Reynolds, Inc.)	
Tim Mooney)	
Respondents)	

SUMMARY OF ISSUES

Claimant alleged that Respondent Mooney's recommendation of Southland Corporation bonds was unsuitable given his investment objectives and past investment strategies. Claimant further alleged misrepresentation regarding whether these bonds were or were not "junk" bonds, as well as misrepresentation regarding the commission on the sale.

Respondents denied all allegations, and asserted that the bonds were suitable for Claimant when the recommendation to buy was made. Respondents denied liability for any loss suffered by Claimant. Regarding the commission or markup, Respondents asserted that there is no rule of law requiring disclosure of the markup on corporate bonds in a principal transaction.

DAMAGES AND RELIEF REQUESTED

Claimant requested damages of \$34,340.62, plus return of \$5,625 in excessive commissions, interest, punitive damages, costs of arbitration and attorney's fees.

Respondents requested dismissal of all claims, whether by motion for directed verdict, or upon due deliberation by the panel, and an award of costs of arbitration and attorney fees. At hearing, the panel denied Respondent's motion for a directed verdict in view of the existence of a triable issue of fact on the claims asserted.

PROCEDURAL SUMMARY

This claim was originally filed in the Superior Court of California, County of San Francisco, Case No. 911280, dismissed without prejudice for the purpose of allowing the parties to proceed to arbitration by Order of the Court dated December 15, 1989. The claim was filed with the NASD on January 30, 1990.

DAMAGES AND RELIEF AWARDED

On March 15, 1991, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on November 6, 1989, by an authorized representative of Dean Witter Reynolds on April 4, 1990, and by Tim Mooney on April 4, 1990. The hearing was conducted in San Francisco, California and lasted two (2) sessions. 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 as follows:

1. Claimant failed to produce sufficient and persuasive evidence to support claimant's burden of proof on the issues related to misrepresentation and suitability, as alleged, at the time of purchase of the corporate bond by claimant. Claimant failed to produce sufficient and persuasive evidence to support any statutory requirement or rule of law requiring disclosure of the markup on corporate bonds under the particular circumstances of this principal transaction in view of the testimony and documents received in evidence. Therefore, all claims brought by claimant are dismissed.

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. In addition, Respondent Dean Witter Reynolds, is also assessed forum fees of \$750.00, payable to the NASD.

OTHER ISSUES

None.

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DATE SERVED: 4/9/91



Kathryn J. Toronto
