

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

ERACORP PENSION & Profit Sharing Trust

NOV 18
ARBITRATION-CI

90-01055

Name of Respondent

Drake Capital Securities, Inc.
Barbara Crowley

REPRESENTATION OF PARTIES

ERACORP Pension & Profit Sharing Trust was represented by Ronald H. Groth, Esq. of Thomson, Moran & Groth, Ltd., Minneapolis, Minnesota.

Drake Capital Securities, Inc. was represented by Sally J. Whiteside, Esq. of Linquist & Vennun, Minneapolis, Minnesota.

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about April 11, 1990, ERACORP Pension & Profit Sharing Trust ("Claimant") alleged that Barbara Crowley a registered representative employed by Drake Capital Securities, Inc. ("Drake") and Dean Witter Reynolds, Inc. ("DWR") invested the entire account in highly speculative uncovered calls of Texaco, Inc. without the consent of the trustee, Roy A. Ahern.

In its Statement of Answer, Respondent Drake stated that the investment's were consistent with the Claimant's objectives and were made with the advice and consent of the trustee. Respondent Drake also stated that the trades in question were made after Barbara Crowley left the employ of Drake and therefore, it should have no responsibility for these transactions. Respondent Drake further asserted that the claims are time barred by the statute of limitations.

OTHER ISSUES

Respondent Dean Witter Reynolds, Inc. settled the claims asserted against it.

Respondent Barbara Crowley did not answer the claim asserted herein did not appear at the hearing. The arbitrator has determined that Bar

Crowley was not served with the Statement of Claim or the notice of hearing pursuant to Section 25 of the NASD Code of Arbitration Procedure.

RELIEF REQUESTED

Claimant requested an award in the amount of \$9,988.93.

Respondent Drake requested that the Statement of Claim be dismissed in its entirety.

PROCEDURAL MATTERS

On Tuesday, October 29, 1991 in Minneapolis, Minnesota during a hearing lasting a total of 2 (two) sessions, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed on September 3, 1990 by Roy Ahern on behalf of Claimant ERACORP Pension & Profit Sharing Trust and on December 20, 1990 by Joseph Di Lillo and Sally L. Case on behalf of Respondent Drake Capital Securities, Inc.

The parties have agreed that a handwritten, signed Award may be entered and to receive a typed, conformed copy of the award while the original remains on file with the NASD.

AWARD

The arbitrator, having considered the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions of the parties, has decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim shall be and hereby is dismissed and denied in its entirety;
2. Each party shall bear its own costs, expenses, and attorney's fees incurred in this matter; and
3. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the non-refundable filing fee in the amount of \$75.00 and shall retain the hearing session deposit in the amount of \$125.00 previously deposited with the NASD by the Claimant. Claimant shall pay to the NASD the sum of \$75.00 and Respondent Drake Capital Securities, Inc. shall pay to the NASD the sum of \$200.00 as forum fees. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

Nov. 12, 1991



George A. Beck, Esq.
Presiding Chair
Public Arbitrator