

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between )

Name of Claimant(s) )

George & Merle Keets JTIN )

) Case No. 90-01088

Name of Respondent(s) )

Jeff Davidson )

Jack Westerfield )

Heard before the Arbitrator:

Edwin B. Kagan, Esq.

Public

CASE SUMMARY

This claim was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on April 16, 1990. Claimants, George and Merle Keets ("the Keets"), alleged that Respondents, Jeff Davidson ("Davidson") and Jack Westerfield ("Westerfield"), were liable for misrepresenting to Claimants the safety of investing in Dean Witter High Income Advantage Trust II mutual fund.

In a Statement of Answer filed with the NASD on June 8, 1990, Respondents denied liability and alleged that: Claimants were informed that the high income mutual fund was not as safe as some other investments; Claimants were provided a prospectus; any losses were due to unforeseen market conditions; and, there was no wrongdoing on the part of Westerfield or Davidson. Respondents asserted affirmative defenses including that: there was no misrepresentation or omission; Respondents lacked any intent to defraud Claimants; lack of proximate cause; superceding and unforeseeable market conditions; and, failure to state a claim.

In a Statement of Reply filed with the NASD on July 12, 1990, Claimants denied that they had asked to be informed if a higher yield investment became available and denied that they were informed that the fund was not as safe as certain other investments. Claimants alleged that Westerfield is liable because as Branch Manager of the Dean Witter Reynolds Branch Office where Davidson was employed, he should have been aware of Davidson's misrepresentations.

### RELIEF REQUESTED

Claimants requested damages in the amount of \$22,600.00.

Respondents requested dismissal of the claim plus costs and attorney's fees.

### HEARD

On February 20, 1991, in Tampa, Florida, during a hearing lasting two (2) sessions, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants, on April 12, 1990 and signed by Respondents, on June 6, 1990.

After considering the pleadings, the testimony, and the evidence presented at the hearing, the arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Davidson and Westerfield, are found liable, jointly and severally, and shall pay to the Claimants the amount of \$22,600.00.
2. Upon receipt of the amount specified in paragraph (1), Claimants shall tender to Dean Witter Reynolds, Inc. all shares of Dean Witter Reynolds High Income Advantage Trust II mutual fund which they own and shall execute any documents necessary to transfer ownership of said mutual fund to Dean Witter Reynolds, Inc.
3. Respondents' request for costs and attorney' fees is denied.

### FORUM FEES

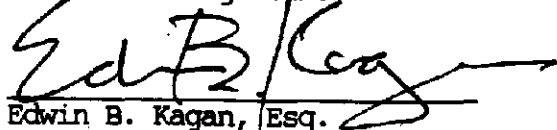
1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Arbitrator has assessed forum fees in the amount of \$800.00 (2 sessions x \$400.00 per session). Respondents, Davidson and Westerfield are hereby assessed \$800.00, jointly and severally, \$400.00 of which shall be paid directly to Claimants, and \$400.00 of which shall be paid to the National Association of Securities Dealers, Inc.
2. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

Fees are payable to the National Association of Securities Dealers, Inc.

### OTHER ISSUES

None.

Arbitrator Signature

  
Edwin B. Kagan, Esq.

Date of Decision: March 18, 1