

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Jennie S. and Sandra E. Locket

90-01476

Name of Respondent(s)

Dean Witter Reynolds, Inc.  
Jane P. Saunders

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REPRESENTATION OF PARTIES

Claimants Jennie S. Locket and Sandra E. Locket were represented by Jim Guy Tucker and W. Kirby Lockhart of the Law Offices of Mitchell, Williams, Selig & Tucker of Little Rock, Arkansas.

Respondents Dean Witter Reynolds, Inc. and Jane Saunders were represented by Thomas N. Rose of Friday, Eldredge & Clark of Little Rock, Arkansas.

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on May 24, 1990, Claimants Jennie S. Locket and Sandra E. Locket alleged that Respondent Jane Saunders, while acting as a registered representative and account executive for Respondent Dean Witter Reynolds, Inc., engaged in certain acts involving the Claimant's investment in Dean Witter's U.S. Government Securities Trust and Dean Witter's High Yield Bond Fund. Respondent Saunders allegedly:

1. Purposely or recklessly failed to disclose material facts or risks associated with the transactions;
2. Failed to inform Claimants of the losses in principal or that the principal was at risk;
3. Recommended investment in the funds while purposely or recklessly disregarding the financial needs or objectives of the Claimants; and,

4. Recklessly breached the fiduciary duty owed to Claimants by recommending investments which were unsuitable for the Claimants and by failing to disclose material facts or risk attendant to these investments.

Claimants alleged that the above activities constituted a violation of Rule 10(b)(5) of the Securities and Exchange Act of 1934 and A.C.A. Sec. 23-42-106, the civil liability section of the Arkansas Securities Act and is conduct contrary to the Rules of Fair Practice of the NASD and the Securities and Exchange Commission.

In a Statement of Answer filed with the NASD on July 18, 1990, Respondents Dean Witter Reynolds, Inc. and Jane Saunders denied the material allegations of the Statement of Claim and stated affirmatively that:

1. Respondent Saunders made a full inquiry into the financial assets, needs and objectives of Claimants and that the investments were suitable;
2. Claimants were informed that the value of the investments would fluctuate, but that it should pay a higher yield than certificates of deposit;
3. Claimants were fully informed of the potential risks and rewards of the investments and made the decision to invest; and,
4. Claimants were informed that the value of the U.S. Government Securities Trust had declined prior to the investment into the Dean Witter High Yield Fund.

Respondents alleged the following affirmative defenses:

1. The Statement of Claim failed to state a claim upon which relief may be granted;
2. Respondents did not owe a fiduciary duty to Claimants as a matter of law and under the circumstances of this case;
3. Respondents fully and faithfully carried out any duties owed to Claimants;
4. Claimants controlled their account;
5. The investments were suitable;
6. Respondents acted without any intent to defraud Claimants or with reckless disregard for them;

7. The claim is barred by the application of the doctrines of waiver, ratification and estoppel;

8. Respondents had in place reasonable supervisory procedures which they reasonably and diligently implemented and followed; and,

9. There can be no recovery for some or all of the items of compensatory damages claimed as a matter of law.

#### RELIEF REQUESTED

Claimants Jennie S. Locket and Sandra E. Locket requested entry of an award against Respondents Dean Witter Reynolds, Inc. and Jane Saunders for the amount of \$29,301.46 plus interest at the rate of 6% per annum, costs and attorneys' fees pursuant to A.C.A. Sec. 23-42-106(a)(1).

Respondents Dean Witter Reynolds, Inc. and Jane Saunders requested that the Statement of Claim be dismissed and denied in its entirety and that they be awarded costs and attorneys' fees.

#### PROCEDURAL MATTERS

On April 10, 1991 in Little Rock, Arkansas during a hearing lasting three (3) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on March 30, 1990 by Claimants Jennie S. Locket and Sandra E. Locket, on July 17, 1990 by William B. Peterson on behalf of Respondent Dean Witter Reynolds, Inc. and on July 16, 1990 by Respondent Jane Saunders.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award 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.

At hearing, Claimants filed a pre-hearing brief with the panel. Respondents requested and were granted until April 17, 1991 to respond to the legal issues addressed in the brief.

#### AWARD

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

1. Respondent Dean Witter Reynolds is liable for and shall pay to Claimants Jennie S. Locket and Sandra E. Locket the sum \$14,555.00

plus interest at the rate of 6% per annum from January 25, 1991 until said amount is paid;

2. In addition, Respondent Dean Witter Reynolds, Inc. is liable for and shall pay to Claimants Jennie S. Locket and Sandra E. Locket the sum of \$8,000.00 as attorneys' fees. In determining to award attorneys' fees to Claimants, the panel considered the closing arguments of the parties, the Arkansas Securities Act (A.C.A. Sec. 23-42-106) and the briefs submitted by the parties and determined that authority existed for an award of attorneys' fees in favor of Claimants;

3. The parties shall each bear their own costs, except for those specifically enumerated herein;

4. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$100.00 claim filing fee and refund the \$300.00 hearing session deposit previously deposited with the NASD by the Claimants Jennie S. Locket and Sandra E. Locket. Respondent Dean Witter Reynolds, Inc. is liable for and shall pay to Claimants Jennie S. Locket and Sandra E. Locket the sum of \$100.00 as costs in this matter. In addition, Respondent Dean Witter Reynolds, Inc. is liable for and shall pay to the NASD forum fees in the amount of \$1,200.00.

Dated:

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B. Jeffrey Pence  
Presiding Chair-Public Arbitrator

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Charles C. Sisney  
Public Arbitrator

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Frederick J. Menz  
Industry Arbitrator

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Dated:

May 14, 1991

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Presiding Chair-Public Arbitrator

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*Frederick J. Menz*  
Frederick J. Menz  
Industry Arbitrator

5-15-91