

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)

Name of Claimant(s))

Earl & Dore Gabriel, JTEN)

Case No. 90-01506

Name of Respondent(s))

Dean Witter Reynolds, Inc.)
Kevin Clark)

Heard before the members of the Arbitration Panel:

Arthur J. Leibell, Esq.

Public

Linda M. Granata, Esq.

Industry

David Unterberg, Esq.

Public

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on May 25, 1990. Claimants, Earl and Dore Gabriel ("Gabriel"), alleged that Respondents, Dean Witter Reynolds, Inc. ("DWR") and Kevin Clark ("Clark"), were advised that Claimants were retired, that their investment portfolio consisted of their life savings, and their investment objectives were safety of principal and income with a minimum of risk; made misrepresentations of and omitted to state material facts; induced Claimants to sell their portfolios of tax free municipal bonds; induced Claimants to purchase securities in limited partnerships and junk bonds that were unsuitable for Claimants' expressed investment objectives; that Respondents' actions caused a substantial loss to Claimants; and, constituted negligent supervision, fraud and deceit, breach of fiduciary duty, negligence, violation of Title 18 U.S.C. Sections 1962(c) and (d), Sections 10(b) and 20(a) of the Exchange Act, and Section 517.301, Florida Statutes.

In a Statement of Answer filed with the NASD on August 20, 1990, Respondents denied all allegations of wrongdoing and alleged the affirmative defenses of losses due to market fluctuations and economic conditions not attributable to Respondents; estoppel; laches or applicable statute of limitations; and, failure to mitigate damages.

RELIEF REQUESTED

Claimants requested damages in the amount of \$164,251.00, interest, RICO damages in the amount of \$492,753.00, punitive damages, costs and attorney's fees.

Respondents requested dismissal and costs.

AWARD

On April 3, 4 and 5, 1991, in Fort Lauderdale, Florida, during a hearing lasting five (5) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on May 3, 1990, by Clark on April 3, 1991 and by Edward Larkin on behalf of Respondent, DWR, on April 3, 1991.

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

1. 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.
2. All claims against Respondents, DWR and Clark, are hereby dismissed with prejudice.
3. Claimants' requests for attorney's fees, costs, punitive damages and RICO damages are denied.

FORUM FEES

1. Pursuant to Section 43c of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$3,750.00 (5 sessions x \$750.00). Claimants are hereby assessed \$1,875.00 for which the NASD shall retain \$550.00 of the \$750.00 previously deposited in partial satisfaction thereof. The NASD shall also retain the \$200.00 non-refundable filing fee. Respondents, DWR and Clark, are hereby assessed \$1,875.00, jointly and severally, payable 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.

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

OTHER ISSUES

None.

Concurring Arbitrator(s) Signature

/s/
Arthur J. Leibell, Esq.

/s/
David Unterberg, Esq.

/s/
Linda M. Granata, Esq.

Date of Decision: April 26, 1991