

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)	
<u>Name of Claimant(s)</u>)	
Eugene Cummings)	
<u>Name of Respondent(s)</u>)	
Dean Witter Reynolds, Inc.)	
)	Case No. 90-01865

REPRESENTATION

For Claimant, Eugene Cummings ("Cummings"): A. Grant Bohl of D.B. Management.

For Respondent, Dean Witter Reynolds, Inc. ("Dean Witter"): Abe Lampert, Esq. of Dean Witter.

CASE INFORMATION

Statement of Claim filed: on July 24, 1990 and amended on June 26, 1991.

Claimant's Submission Agreement signed: on June 21, 1990.

Respondent's Statement of Answer filed: on September 17, 1990 and amended September 10, 1991. Respondent's Submission Agreement signed: on August 31, 1990, by Larry Meyer.

HEARING INFORMATION

On October 30, 1991, in Tampa, Florida, a hearing lasting two (2) sessions was conducted.

CASE SUMMARY

Claimant alleged that Respondent, through its employees, was liable for: fraud; misrepresentation; breach of fiduciary duty; and, failure to supervise. Claimant alleged that Respondent's employee induced Claimant into purchasing low quality stocks, junk bond funds and, limited partnerships which were unsuitable for Claimant in light of his investment objectives and sophistication.

Respondent denied all allegations of wrongdoing and alleged that: Claimant has failed to plead fraud with specificity; the claim is time barred; punitive damages are not recoverable for breach of contract claims; under Florida law, a claim that a securities firm handled an account negligently does not constitute a tort independent from breach of contract.

Respondent alleged the affirmative defenses of: laches; waiver; estoppel; contributory negligence; and, failure to mitigate damages.

RELIEF REQUESTED

Claimant requested damages in the amount of \$126,475.00, plus punitive damages in the amount of \$373,525.00, plus interest and costs.

Respondent requested dismissal of the claim.

OTHER ISSUES CONSIDERED & DECIDED

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

AWARD

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

1. Respondent, Dean Witter, is found not liable and, therefore, all claims against it are hereby dismissed.
2. Claimant's request for costs and punitive damages is denied.

OTHER COSTS

1. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$1,500.00 (2 sessions x \$750.00 per session). Claimant is hereby assessed \$1,500.00 for which the NASD shall retain the \$750.00 previously deposited in partial satisfaction thereof.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

/S/
David A. Townsend, Esq.

Public

/S/
Bruce A. Beery

Public

/S/
Arthur De Stefano

Industry

Date of Decision: December 5, 1991