

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Joseph and Shirley Nain

90-01938

Name of Respondents

Dean Witter Reynolds, Inc.
Frank Isabelli

REPRESENTATION

For Claimants at the hearing: Peter Karabas, Esq. and Elizabeth Fiesan, Esq. of Abramson & Fox, Chicago, Illinois.

For Respondents at the hearing: Charles Risch, Esq. and Randall Gold, Esq. of Lawrence, Kamin, Saunders & Uhlenhop, Chicago, Illinois.

CASE INFORMATION

Statement of Claim filed: July 12, 1990. Claimant, Joseph and Shirley Nain's Submission Agreement signed on: July 7, 1990.

Joint Statement of Answer filed by Respondents, Dean Witter Reynolds, Inc. and Frank Isabelli on: September 29, 1990. Respondent, Dean Witter Reynolds, Inc.'s Submission Agreement signed on: September 24, 1990. Respondent, Frank Isabelli's Submission Agreement signed on: September 27, 1990.

HEARING INFORMATION

Hearing Dates/Sessions: January 25, 1994 for two (2) sessions;
January 26, 1994 for two (2) sessions.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimants, Joseph and Shirley Nain ("Claimants") alleged that Respondent Dean Witter Reynolds, Inc. ("Dean Witter") through its agent, Respondent, Frank Isabelli ("Isabelli") violated Section 10(b) of the Securities Exchange Act of 1934, breached fiduciary duties, failed to supervise, and violated Florida and Illinois Blue sky laws. Claimants, more specifically, alleged that Isabelli failed to inform claimants that they could rollover Joseph Nain's retirement profit sharing distribution into an IRA account and defer federal income taxes on the lump sum distribution and instead opened a brokerage account in which claimants lost monies.

Claimants alleged that Isabelli recommended that they take aggressive market positions and engage in frequent trading in order to pay income taxes. Claimants alleged that the investments Isabelli purchased for their account were: Pillsbury stock, Polaroid stock, Waste Management stock, Americus Trust IBM Scores, Storage Technology common stock, and puts and calls in Japanese Yen, U.S. Treasury Bonds, and crude oil.

Respondents Dean Witter and Isabelli alleged that Joseph Nain controlled and directed all activity in his accounts. Dean Witter and Isabelli alleged that Joseph Nain was provided a copy of the pamphlet referred to in the risk disclosure statement, and was informed of the risks of option trading. Respondents also alleged that because Joseph Nain wanted to trade all kinds of options in his account, he decided to forego the IRA rollover and to pay the income taxes.

RELIEF REQUESTED

Claimants requested compensatory and punitive damages plus interest, costs and attorneys' fees.

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

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. The Claimant's Statement of Claim is denied and dismissed in its entirety;
2. Each of the parties shall bear their own costs and expenses, including attorney's fees, other than those specifically enumerated under Forum Fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

4 sessions X \$750 = \$3000 minus hearing session deposit of \$750 = net \$2250 due.

Forum fees Assessed Against Claimants, jointly and severally, in the amount of \$750 and against Respondents, Dean Witter Reynolds, Inc. and Frank Isabelli, jointly and severally, in the amount of \$1500.

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

By The Arbitration Panel:

Dated:

<u>2-4-94</u>	<u>s/s</u>	<u>Barry E. Simon, Esq.</u> Barry E. Simon, Esq. Presiding, Public Arbitrator
<u>2-7-94</u>	<u>s/s</u>	<u>Morton Denlow, Esq.</u> Morton Denlow, Esq. Public Arbitrator
<u>2-14-94</u>	<u>s/s</u>	<u>John R. Scott</u> John R. Scott Industry Arbitrator

Date Award Served By The NASD: 2-22-94