

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Eugene Metzger, Esq.

90-02386

Name of Respondents

Dean Witter Reynolds, Inc.
James R. McIntire

Heard before:

Stephen E. Crable, Esq.

Public Arbitrator

Edgar T. Bellinger, Esq.

Public Arbitrator

Mr. Bryon P. Fusini

Industry Arbitrator

REPRESENTATION

Claimant, Eugene J. Metzger, represented himself in the arbitration. Respondents, Dean Witter Reynolds, Inc. and James R. McIntire were represented by: Wallace L. Timmeny of McGuire, Woods, Battle & Boothe.

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on August 27, 1990. Claimant alleged that Respondents failed to deliver securities purchased on his behalf and that Respondents acted in bad faith in handling of his account. Claimant alleged that his broker, Respondent McIntire recommended that Claimant purchase newly issued stock of the Jamaica Savings Bank. Claimant alleged that after reviewing the prospectus, he contacted Respondent McIntire and told him to purchase the stock. Claimant alleged that Respondent McIntire told Claimant to journal the funds from his account to another investor's account who had a "special relationship" with Jamaica Savings Bank. Claimant alleged that he purchased the stock on or about June 14, 1990, that the stock was issued on June 21, 1990 and that Respondent McIntire had advised the Claimant on June 22, 1990 that he had received 40,000 shares. Claimant alleged that Respondents later "unraveled" the whole transaction which they had no right to do. Claimant alleged that due to the representations of Respondents he purchased the stock through them although he could have purchased it elsewhere. Claimant alleged that due to Respondents wrongful conduct he was unable to purchase the newly issued stock

of Jamaica Savings Bank.

In a Statement of Answer filed with the NASD on December 31, 1990, Respondents categorically denied all allegations of wrongdoing. Respondents further alleged that Claimant is a sophisticated attorney who specializes in banking law. Respondents maintained that Claimant recognized that he was not one of the individuals eligible to participate in the initial offering. Respondents maintained that they pursued every step possible within the law to facilitate the acquisition of the stock. Respondents maintained that they made no assurances that the stock could be acquired within the limits of the law. Respondents maintained that, prior to the offering date, Claimant was informed that the stock could not be acquired for his account. Respondents maintained that they were not responsible for the Claimant's inability to obtain the stock in question and that Claimant was prohibited from making the purchases by the terms of the offer.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$120,000, plus punitive damages in the same amount as actual damages. Claimant also requested attorneys' fees and costs.

Respondents requested that Claimant's claim be dismissed and costs and attorneys' fees should be awarded to the Respondents.

AWARD

On May 21, 1991 in Washington, D.C. during a hearing lasting two sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant, Eugene J. Metzger on August 24, 1990. Respondents did not execute a submission agreement; however, they did file an answer and were represented by counsel at the hearing. Pursuant to Section 12(a) of the Code of Arbitration Procedure, the presiding arbitrators exercised their jurisdiction over the Respondent.

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.

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. That Claimant's claim is denied in its entirety.

2. That all parties shall bear their respective costs, including attorneys' fees.
3. Pursuant to Section 43 of the Code of Arbitration Procedure, the NASD, Inc. shall retain the hearing deposit fee previously deposited by the Claimant.
4. That Claimant's claim for punitive damages is denied in its entirety.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, Respondents are assessed forum fees in the amount of \$750.

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

Concurring Arbitrator Signature

/s/
Edgar T. Bellinger, Esq.

/s/
Stephen E. Crable, Esq.

/s/
Bryon P. Fusini

Date of Decision: June 24, 1991