

Arbitration

N.A.S.D. AWARD

National Association of  
Securities Dealers, Inc.  
One East Broward Boulevard  
Suite 1000  
Ft. Lauderdale, Florida 33301  
(305) 522-7391

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between )

Name of Claimant(s) )

John and Sonia Lynch )

Case No. 90-02481

Name of Respondent(s) )

Dean Witter Reynolds, Inc. )

Larry Sheffield )

Heard before the Arbitrator:

Arieh Ioe Douer

Public

REPRESENTATION

For Claimants, John and Sonia Lynch ("the Lynchs"): Russell L. Forkey, Esq.  
of the Law Offices of Russell L. Forkey.

For Respondents, Dean Witter Reynolds, Inc. ("Dean Witter ") and  
Larry Sheffield ("Sheffield"): Melinda Socol Herbst of Dean Witter Reynolds,  
Inc.

CASE INFORMATION

Statement of Claim filed on: September 6, 1990.

Claimants' Submission Agreement signed on: August 23, 1990.

Respondent, Sheffield's Statement of Answer signed on: December 19, 1990.

Respondents' Submission Agreement signed by Lorena Kern on December 21, 1990,  
on behalf of Dean Witter.

HEARING INFORMATION

On May 1, May 2 and October 4, 1991 in Fort Lauderdale, Florida hearings  
lasting six (6) sessions were conducted.

RECEIVED  
MAY 1991  
Ft. Lauderdale, Florida

### CASE SUMMARY

Claimants alleged that Respondents were liable for: fraud and deceit; breach of fiduciary duty; negligence and, as it relates to Dean Witter, negligent supervision. Claimants alleged that: Sheffield recommended they purchase a certain stock and represented that it would increase in value; said stock was not suitable for Claimants; and Sheffield's representations were false and misleading.

Respondents, denied all allegations of wrongdoing and alleged that: Sheffield discussed several different investments with Claimants and explained the risks involved with each one; Claimants received confirmations and did not complain about the transactions until after the stock declined in value; Claimants were suitable for the transaction; and, Claimants authorized the purchase. Respondents asserted affirmative defenses including: waiver; estoppel; ratification; assumption of risk; lack of intent to defraud; superceding and intervening causes; failure to mitigate damages, and that Dean Witter had adequate supervisory procedures which were diligently followed.

### RELIEF REQUESTED

Claimants requested: damages in the amount of \$12,436.87, plus interest, costs and such other relief as the Panel deems appropriate.

Respondents requested dismissal of the claim, plus costs.

### AWARD

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

1. Respondents, Dean Witter and Sheffield, are found liable, jointly and severally, and shall pay to the Claimants the amount of \$8,866.31, inclusive of interest at the legal rate of 12% per annum.
2. Claimants' request for costs is denied.
3. Respondents' request for costs is denied.

### OTHER COSTS

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

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Arbitrator has assessed forum fees in the amount of \$1,800.00 (six sessions x \$300.00 per session). Respondents, Dean Witter and Sheffield are hereby assessed \$1,800.00, jointly and severally, \$300.00 of which shall be paid directly to the Claimants and \$1,500.00 of which shall be paid to the National Association of Securities Dealers, Inc. Additionally, Respondents, Dean Witter and Sheffield are hereby assessed the \$100.00 non-refundable filing fee payable directly to the Claimants. The NASD shall retain the \$300.00 previously deposited by the Claimants in partial satisfaction of the forum fees and shall retain the \$100.00 previously deposited by the Claimants in satisfaction of the non-refundable filing fee.

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

OTHER ISSUES

None.

Arbitrator's Signature



Arieh Leo Douer

Date of Decision: November 18, 1991