

N.A.S.D. AMENDED AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)	
)	
<u>Name of Claimant(s)</u>)	
)	
Henry K. Ruschmeyer)	
)	
)	Case No. 90-02503
)	
<u>Name of Respondent(s)</u>)	
)	
Dean Witter Reynolds, Inc.)	
)	

REPRESENTATION

For Claimant, Henry Ruschmeyer ("Ruschmeyer"): Neal Blaher, Esq. of Allen, Dyer, Doppelt & Franjola.

For Respondent, Dean Witter Reynolds, Inc. ("Dean Witter") George Sullivan, Esq. of Dean Witter Reynolds, Inc.

CASE INFORMATION

Statement of Claim filed: September 7, 1990 and amended August 19, 1991. Claimant's Submission Agreement signed: August 31, 1990.

Respondent's Statement of Answer filed: December 5, 1990. Respondent's Submission Agreement signed by Lorena Kern on behalf of Dean Witter Reynolds on December 6, 1990.

HEARING INFORMATION

On July 30, 1991 and February 26, 1992, in Tampa, Florida, Pre-hearing Conferences lasting two sessions were conducted via telephone conference call with an arbitrator.

On April 20, 21 and 22, 1992, in Tampa, Florida, hearings lasting seven sessions were conducted.

CASE SUMMARY

Claimant alleged that Respondent was liable for violations of Federal and State securities laws, including violation of the North Carolina Securities Act; civil theft; breach of fiduciary duty; misrepresentation and negligence. Claimant alleged that Respondent misrepresented the speculative nature of the securities and the success, or lack thereof, of the trading conducted in Claimant's account; and the trading of various common stocks, closed end

funds, limited partnerships and mutual funds, was unsuitable for Claimant, in light of his investment objectives, lack of sophistication, age and retirement status.

Respondent denied all allegations of wrongdoing and alleged the Statement of Claim failed to specifically set forth any relevant, underlying facts.

RELIEF REQUESTED

Claimant requested damages in the amount of \$29,000.00 plus income which the account should have earned, plus interest, costs, attorney's fees and punitive damages.

Respondent requested dismissal of the claim plus costs.

OTHER ISSUES CONSIDERED & DECIDED

1. The Panel has denied Claimant's request to assess forum fees for only six (6) sessions.
2. 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 and post hearing submissions, the 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. Additionally, the Panel has specifically dismissed Count VI of the amended Statement of Claim relating to violations of the North Carolina Securities Act.
3. Claimant's request for attorney's fees, costs and punitive damages is denied.
4. Respondent, Dean Witter's, request for expert witness costs in the amount of \$1,931.30 is denied.

OTHER COSTS

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

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$3,400.00 (two Pre-hearing Conferences

x \$300.00 per conference plus seven sessions x \$400.00 per session). Claimant is hereby assessed \$3,100.00. Respondent, Dean Witter, is hereby assessed \$300.00 for the second pre-hearing conference. The NASD shall retain the \$280.00 previously deposited by Claimant in partial satisfaction of such fees.

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

Concurring Arbitrators' Signatures

/s/
John P. Cullen, Esq.

Public

/s/
John F. Howes

Public

/s/
Kathleen Baggett Church

Industry

August 13, 1992
Date of Decision: