



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)

Mack Alexander

Name of Respondent(s)

Dean Witter Reynolds, Inc.
Charles Harshkovitz

Case No. 90-02900

REPRESENTATION

For Claimant, Mack Alexander ("Alexander"): pro se.

For Respondents, Dean Witter Reynolds, Inc. ("DWR") and Charles Harshkovitz ("Harshkovitz"): Melinda Socol Herbst, Esq. of DWR

CASE INFORMATION

Statement of Claim filed on: October 17, 1990.

Claimant's Submission Agreement signed on: August 29, 1990.

Respondents' DWR and Harshkovitz, Statement of Answer filed on: March 27, 1991.

Respondents' Submissions Agreement signed by Harshkovitz on March 18, 1991, and by Lorena J. Kern on behalf of DWR on March 26, 1991.

HEARING INFORMATION

On August 19, 1991, in Fort Lauderdale, Florida, a pre-hearing conference lasting one (1) session was conducted (via telephone conference call) with an arbitrator.

On October 28, 1991, in Fort Lauderdale, Florida, a hearing lasting three (3) sessions was conducted.

CASE SUMMARY

Claimant alleged that he was a 70 year old retiree who required absolute safety of investments; that Respondents, through Hershokovitz, failed to fulfill their obligations to Claimant; that Respondents misled Claimant about the safety and suitability of his investments; and, that Respondents convinced Claimant to "sell the option" as a perfectly safe alternative to his money market funds for his Keogh plan.

Respondents denied all allegations of wrongdoing and alleged that Claimant was dissatisfied with his mutual fund investments because he wanted greater growth; that Claimant was an experienced investor with prior options experience; that, after full disclosure of the risks to Claimant, Claimant decided to invest in options; that Claimant's portfolio was balanced; and, that all trades were suitable.

Respondents alleged the affirmative defenses of failure to state a claim; suitability; authorization; failure to timely object; waiver and estoppel; ratification; full disclosure; no intent or reckless disregard; bar by statute of limitation; failure to exercise due diligence and negligence; adequate supervision; superseding intervening causes; no entitlement to damages as a matter of law; failure to mitigate and, release, accord and satisfaction.

RELIEF REQUESTED

Claimant requested damages in the amount of \$13,500.00.

Respondents requested dismissal, costs and legal fees.

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 and the post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents are found not liable and, therefore, all claims against them are hereby dismissed.
2. Respondents' requests for costs and legal fees are denied.

OTHER COSTS

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 \$1,500.00 (1 pre-hearing conference x \$300.00 plus 3 sessions x \$400.00). Claimant is hereby assessed \$750.00 for which the NASD shall retain \$400.00 of the \$500.00 previously deposited in partial satisfaction thereof. Claimant shall pay the balance due of \$350.00 to the National Association of Securities Dealers, Inc. Respondents, DWR and Herschkovitz, are hereby assessed \$750.00, jointly and severally, payable to the National Association of Securities Dealers, Inc.

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

Concurring Arbitrators' Signatures

Name

/S/
Robert Herschmann, Esq.

Public

/S/
Andrew Bartfay

Public

/S/
Herbert S. Karol

Industry

Date of Decision: December 5, 1991