

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between
AC Gardner And
Johnnie L. Gardner

Claimants,

#90-03079

and
Dean Witter Reynolds, Inc.
And James S. Stanley

Respondents

REPRESENTATION OF PARTIES

Claimants, AC and Johnnie L. Gardner, were represented by Kieran D. Maye, JR, esq., and Ronald L. Matlock, esq. Claimant Johnnie L. Gardner was not present. Respondents, Dean Witter Reynolds, Inc. and James S. Stanley, were represented by Patrick Ryan, esq.

CASE SUMMARY

In a statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about October 31, 1990 Claimants, AC Gardner and Johnnie L. Gardner, alleged unauthorized trading, unsuitable investment, and breach of fiduciary duty of good faith and fair dealing.

Claimants alleged that Respondent James S. Stanley ("Stanley") contacted Claimants several times concerning investment of their money market funds with Respondent Dean Witter Reynolds, Inc. ("DWR") into Respondent DWR's, "High Income Advantage Trust II," "the Trust," which was a junk bond fund. Claimants did not give Respondent Stanley the authority to make the transfer of funds. In September of 1988, Respondent Stanley initiated the transfer of Claimants' funds into the Trust. Claimants had no knowledge of the transfer until October of 1988. At that time, and thereafter, until June 28, 1990, Claimants made repeated requests to Respondent DWR to remove the funds from the Trust. Respondent DWR failed to act on these requests until June of 1990 when Respondent DWR sent a check to Claimants in the amount of \$18,123.04.

In a statement of answer filed with the NASD on January 18, 1991, Respondents, DWR and Stanley, denied that Claimants' losses were the result of any act or omission on their part. In addition, Respondents stated as their affirmative defenses that: 1. the Claimants understood the risk associated with high yield funds; 2. Claimants authorized the purchase of the Trust; 3. Claimants ratified the purchase of the Trust; and 4. Claimants failed to mitigate their damages through claimants failure to timely review their monthly account statements, and their refusal to sell the Trust upon reviewing the first statement from the

Trust.

RELIEF REQUESTED

Claimants, AC and Johnnie L. Gardner, asked the panel to grant them the following relief: 1. Recovery of all principal and interest lost, in the amounts of \$6,876.96 principal, and \$4,408.52 interest lost on the money market account; 2. Exemplary and punitive damages of \$1,000,000; and 3. All costs, and attorney's fees.

Respondents, DWR and James E. Stanley, requested that Claimant's claim be dismissed in its entirety, that Respondents DWR and Stanley be awarded costs and reasonable attorney's fees, and such other relief as may be deemed just and proper.

PROCEDURAL MATTERS

On August 13, 1991 in Oklahoma City, Oklahoma during a hearing lasting a total of 2 sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on November 5, 1990 by Claimants AC and Johnnie L. Gardner on January 15, 1991 by Judith Rosenberg on behalf of Respondent Dean Witter Reynolds, Inc. and on December 10, 1990 by Respondent James S. Stanley.

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 original remains on file with the NASD.

AWARD

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Dean Witter Reynolds, Inc. is liable to, and shall pay to Claimants AC Gardner and Johnnie L. Gardner the sum of \$6,876.96, plus interest at the rate of 10% per annum from November 1, 1988 to July 1, 1990 on said amount;

2. Respondent Dean Witter Reynolds, Inc. is liable to, and shall pay to Claimants AC Gardner and Johnnie L. Gardner attorney's fees in the amount of \$3,500.00. The authority for the award of attorney's fees is contained in Claimants' post-hearing submissions dated September 12, 1991, and October 21, 1991;

3. Respondent Dean Witter Reynolds, Inc. is liable for all hearing session and filing fees as set forth below; and

3a. Pursuant to Section 43 (c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$250 filing fee and the hearing session deposit in the amount of \$1,000.00 previously deposited with the NASD by Claimants AC Gardner and Johnnie L. Gardner;

3b. Respondent Dean Witter Reynolds, Inc. is liable to, and

shall pay to Claimants AC Gardner and Johnnie L. Gardner the sum of \$1,250 paid to the NASD for the filing fee and hearing session deposit in this matter; and

3c. Respondent Dean Witter Reynolds, Inc. is liable for and shall pay to the NASD \$3,000 for two pre hearing conferences and one post hearing conference with the chairman Roy J. Davis, esq. held on August 5, 1991, August 6, 1991, and September 30, 1991 respectively. In addition, Respondent Dean Witter Reynolds, Inc. is liable for, and shall pay to the NASD the sum of \$1,000 which constitutes the additional hearing session held on August 13, 1991.

4. Claimants AC Gardner and Johnnie L. Gardner's claim against James S. Stanley is hereby denied, and dismissed.

Dated:

November 7, 1991

Roy J. Davis
Roy J. Davis, Esq.
Presiding Chair
Public Arbitrator

November 8, 1991

Roy J. Montgomery
Roy J. Montgomery
Industry Arbitrator

November 14, 1991

Robert G. Rader
Robert G. Rader
Industry Arbitrator