

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between )

Name of Claimant(s) )

Donald Kornreich )

Name of Respondent(s) )

Dean Witter Reynolds, Inc. )  
Jonathan Peskin )

Case No. 90-03231

Heard before the arbitrator:

Robert Herschmann, Esq.

Public

REPRESENTATION

Claimant, Donald Kornreich ("Kornreich"), was represented by Martin V. Feldman, Esq.

Respondents, Dean Witter Reynolds, Inc. ("DWR") and Jonathan Peskin ("Peskin"), were represented by Melinda Socol Herbst, Esq. of DWR.

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on November 14, 1990. Claimant alleged that Respondents, through Peskin, made unauthorized purchases and sales of equity securities and bonds in Claimant's accounts; violated Claimant's 10% stop-loss restriction on several transactions; and, promised to recredit the unauthorized trades, violation of stop-loss restrictions and commissions but failed to do so.

Respondents, DWR and Peskin, filed a Statement of Answer with the NASD on March 21, 1991. Respondents denied all allegations of wrongdoing and alleged that all trades were authorized and approved by Claimant; that certain purchases were not entered as stops as agreed; that adjustments were made to Claimant's accounts to reimburse him for the failure to enter the stops; and, that Claimant was made whole by such adjustments.

Respondents alleged the affirmative defenses of failure to state a claim; investments were suitable; authorization; estoppel; ratification; no misrepresentation; disclosure of risks; no intent to defraud; statute of limitations; failure to exercise due diligence; reasonable supervisory and hiring procedures; superseding intervening causes; failure to mitigate damages; and, accord and satisfaction.

#### RELIEF REQUESTED

Claimant requested damages in the amount of \$8,156.87, interest, reasonable attorney's fees and costs.

Respondents requested dismissal and costs.

#### AWARD

On October 22, 1991, in Fort Lauderdale, Florida, during a hearing lasting two (2) sessions, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on June 27, 1990; by Respondent, Peskin, on March 19, 1991; and signed on March 18, 1991 by Lorena J. Kern on behalf of Respondent, DWR.

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

1. Respondents, DWR and Peskin, are found liable, jointly and severally, and shall pay to the Claimant the amount of \$649.21 plus interest at the legal rate of 12% per annum from December 1, 1990 to date in the amount of \$68.56 for a total due to the Claimant of \$717.77.
2. Claimant's request for attorney's fees is denied.

#### FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Arbitrator has assessed forum fees in the amount of \$400.00 (two sessions x \$200.00). Respondents are hereby assessed \$400.00, jointly and severally, \$200.00 of which shall be paid directly to the Claimant and \$200.00 of which shall be paid to the National Association of Securities Dealers, Inc.

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

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

#### OTHER ISSUES

None.

Arbitrator's Signature

*Robert Herschmann*

Robert Herschmann, Esq.

Date of Decision: October 24, 1991