

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

George J. Schmitt

No. 90-03366

Name of Respondent

Dean Witter Reynolds, Inc.

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REPRESENTATION OF PARTIES

For Claimant: David B. Love, Esq. of Winston & Strawn, Chicago, Illinois.

For Respondent: Curt H. Mueller, Esq., Vice President & Senior Attorney, Dean Witter Reynolds, Inc.

CASE INFORMATION

Statement of Claim filed: November 27, 1990.

Claimants' Submission Agreement signed on: October 3, 1990.

Statement of Answer filed by Respondent, Dean Witter Reynolds, Inc. on or about: August 6, 1991.

Respondent Dean Witter Reynolds, Inc.'s Submission Agreement signed on: August 6, 1991.

HEARING INFORMATION

Hearing date: August 10, 1992. One (1) Session.

Hearing Location: Chicago, Illinois.

**CASE SUMMARY**

Claimant George J. Schmitt ("Claimant") alleged misrepresentations and unsuitability by Respondent Dean Witter Reynolds, Inc. ("Respondent"). The allegations arose from a transaction in the Dean Witter/Coldwell Bank Tax Exempt Mortgage Fund, L.P. (the "LP"). Claimant had invested \$50,000.00 in the LP allegedly based on the representations from Mr. Freidler, a broker with Respondent, that investing in the LP was the same as investing in an AA-rated bond, and that Respondent intended to make a market in the LP. Claimant further alleged that he would not have invested in the LP but for Mr. Freidler's representations. Claimant also alleged that the LP was unsuitable for him, and that Mr. Freidler knew of this when he invested Claimant's money in the LP.

For its Statement of Answer, Respondent denied each and every allegation contained in the Statement of Claim. In addition, Respondent alleged that Claimant knew that he was investing in an LP, and that Claimant was a sophisticated investor with prior experience investing in limited Partnerships. In addition, Respondent set forth the following affirmative defenses:

1. Claimant clearly knew he was investing in a limited partnership.
2. The LP was a suitable investment.
3. Claimant's four year long delay in bringing his claim constitutes ratification, waiver, estoppel, and laches and the claim is therefore barred.

**RELIEF REQUESTED**

Claimant requested that the panel order the rescission of Claimant's purchase of his interest in the LP, or in the alternative, award Claimant damages for the loss in value of his interest in the LP. Claimant further requested that the panel award him his costs of arbitration and such other relief as the

panel deemed appropriate.

Respondent requested that Claimant's claim be dismissed, and that attorneys' fees and costs for this proceeding be assessed against Claimant.

#### OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed by 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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant, George J. Schmitt's claims are hereby denied and dismissed with prejudice.
2. Each party shall bear their own costs of this arbitration, except as set forth below.

#### FORUM FEES

Pursuant to Section 43 (c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

1 hearing session X \$400.00 = \$400.00

Pursuant to Section 43 (c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$120.00, and shall retain one-half (1/2) of the \$400.00 hearing session deposit previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$200.00 are assessed against Respondent Dean Witter Reynolds, Inc.

Pursuant to Section 43 (c) of the Code of Arbitration Procedure, Respondent Dean Witter Reynolds, Inc. shall pay to the NASD the sum of \$300.00 as postponement fees incurred for the postponement of the June 4, 1992 hearing date.

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

**CONCURRING ARBITRATORS**

Dated:

August 19, 1992

/s/Joseph O. Kostner  
Joseph O. Kostner  
Presiding Chair  
Public Arbitrator

August 24, 1992

/s/Robert S. Thomas  
Robert S. Thomas  
Public Arbitrator

August 24, 1992

/s/Thomas S. Wilson  
Thomas S. Wilson  
Industry Arbitrator

Date of Service by the NASD: \_\_\_\_\_