

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Hermantown Federal Credit Union

90-03485

Name of Respondent

Dean Witter Reynolds, Inc.

REPRESENTATION

For Claimant: Richard D. Kolu, Esq., Attorney At Law, Duluth, Minnesota.

For Respondent: Steven M. Phillips, Esq. of Popham Haik Schnobrich & Kaufman, Ltd., Minneapolis, Minnesota.

CASE INFORMATION

Statement of Claim filed: December 12, 1990.

Claimant's Submission Agreement signed on: August 28, 1990.

Statement of Answer filed by Respondent on: August 16, 1991.

Respondent's, Submission Agreement signed on: August 16, 1991.

HEARING INFORMATION

Pre-Hearing Conference: November 27, 1991 for one (1) session with the chairman.

Hearing Date/Sessions: September 2, 1992 for two (2) sessions.

Hearing Location: Minneapolis, Minnesota.

CASE SUMMARY

Claimant Hermantown Federal Credit Union, Inc. ("Hermantown") alleged that Respondent Dean Witter Reynolds, Inc. ("Dean Witter") held itself out as having superior knowledge and being in a position to help Hermantown with investment decisions, yet caused a loss in Hermantown's account through bad advice.

More specifically, Hermantown alleged that they had substantial funds invested in Dean Witter U.S. Government Securities Trust Mutual Fund ("Fund"), and upon recommendation by Dean Witter, a transfer of assets was made in the amount of \$473,661.94 from Fund, a legal investment for federal credit union, into Dean Witter/Sears Liquid Asset Fund, Inc., ("Liquid"), an illegal investment. Hermantown alleged that they transferred \$473,661.94 investment back into Fund from Liquid, but the number of shares were reduced and Hermantown suffered an \$18,257.00 loss. Claimant again, on the advice of Dean Witter, transferred assets from Fund to Liquid, causing a loss to Hermantown of \$6,062.00

Dean Witter alleged that they did not have a duty to provide legal advice to Hermantown. Dean Witter alleged that Hermantown demanded the Fund shares be exchanged to Liquid, and the exchange was then executed pursuant to Hermantown's orders. Dean Witter alleged the following defenses: ratification, failure to mitigate damages, laches, estoppel, assumption of the risk, statute of limitations.

RELIEF REQUESTED

Claimant requested damages in the amount of \$24,319.00 as their total losses from the illegal investments, plus \$20,000.00 for the 4% back end load fee.

Respondent requested that the Statement of Claim be dismissed with prejudice in its entirety.

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

1. The Claimant's Statement of Claim is denied and dismissed in its entirety.

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

2 sessions X \$400 = \$800 minus hearing session deposit of \$400 = \$400 due, plus \$300 for the pre hearing conference = net \$700.00 due.

Forum fees Assessed Against: Claimant in the amount of \$150.00 and against Respondent in the amount of \$550.00.

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

By The Arbitration Panel:

Dated:

D. Randall Blohm

~~_____~~
D. Randall Blohm, Esq.
Public Arbitrator

Angela R. Banga

Angela R. Banga, Esq.
Public Arbitrator

AnnDrea M. Benson

AnnDrea M. Benson
Industry Arbitrator

Date Award Served By The NASD:

Nov. 13 1992