

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Mannley S. Bromwell

Claimant

#91-00244

and

Dean Witter Reynolds, Inc.

and

David L. Childers

Respondents

REPRESENTATION OF PARTIES

Claimant Mannley S. Bromwell appeared pro se.

Respondents Dean Witter Reynolds, Inc. and David L. Childers were represented by Wendy R. Robinson, Esq.

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about January 22, 1991, Claimant Mannley S. Bromwell ("Claimant") alleged unauthorized trading, mismanagement of funds, and churning by Respondents Dean Witter Reynolds, Inc. ("DWR") and David L. Childers ("Childers"). Respondent Childers was an account executive at Respondent DWR at all relevant times herein. Claimant had attended seminars given by Respondent Childers between April and May of 1988, and based on the representations made therein, Claimant decided to invest his funds with Respondent DWR. It was alleged that approximately 68 to 70 percent of Claimant's funds, consisting of cash and Panhandle shares from his company pension fund, were placed in stocks through May of 1990. Claimant had made numerous requests of Respondent Childers to reduce the number of shares in his portfolio. When Claimant's portfolio stocks were sold by Respondent Childers, Claimant alleged a \$60,767.00 loss.

In a joint Statement of Answer filed with the NASD on or about March 25, 1991, Respondents DWR and Childers Respondents denied each and every allegation set forth in the Statement of Claim. Respondents set forth their defenses more specifically as follows:

1. All investments were made pursuant to the Claimant's complete understanding, authorization, and objectives;
2. Respondents DWR and Childers are not liable for any of Claimant's losses;
3. The Claimant's account was not churned;
4. The claim is barred by the doctrines of ratification, waiver, and estoppel; and
5. Claimant's loss figure is improper and incorrect.

RELIEF REQUESTED

Claimant requested that the panel award him the sum of \$92,307.69 for compensatory damages, and also for the costs of bringing this arbitration.

Respondents DWR and Childers requested that the claim be dismissed and that they be awarded their cost of defense of this claim.

OTHER ISSUES

Claimant made a Section 32 (c) objection to Respondents' expert witness and related exhibits for the stated reason that the Respondents failed to provide such information 10 days prior to the hearing as required by the NASD Code of Arbitration Procedure. After considering Claimant's objection, and the Respondents' response thereto, the panel ruled to take up the Section 32(c) objection as necessary.

The panel allowed Respondents' expert to testify and also allowed the introduction of the analysis of Claimant's accounts in conjunction with the Expert's testimony. However, the panel ruled that Claimant will be allowed 30 days from the date of the hearing to pose written questions to the expert, and to provide Claimant's own analysis if the Claimant would so choose. The panel also ruled that the proceeding will remain open until such time as the questions were posed, and a response received, or the 30 day period had run.

PROCEDURAL MATTERS

On September 11, 1991 in Kansas City, Missouri 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 January 10, 1991 by Claimant Mannley S. Bromwell, on March 15, 1991 by Wendy S. Robinson on behalf of Respondent Dean Witter Reynolds, Inc. and on March 19, 1991 by Respondent David L. Childers.

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(s) remain 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. Respondents Dean Witter Reynolds, Inc. and David L. Childers are jointly and severally liable for, and shall pay to Claimant Mannley S. Bromwell the sum of \$8,500.00; and
2. Respondents Dean Witter Reynolds, Inc. and David L. Childers are jointly and severally liable for all costs as set forth below.
 - a. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the filing fee in the amount of \$150.00, and the hearing session deposit in the amount of \$500.00 previously deposited with the NASD by the Claimant Mannley S. Bromwell:
 - b. Respondents Dean Witter Reynolds, Inc. and David L. Childers are jointly and severally liable for, and shall pay to Claimant Mannley S. Bromwell the sum of \$650 for the costs of bringing this action; and
 - c. Pursuant to Section 43(c) of the Code of Arbitration Procedure, Respondents Dean Witter Reynolds and David L. Childers are liable for, and shall pay to the NASD the sum of \$500.00 which constitutes the hearing session fee for the second hearing session held on September 11, 1991.

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

Dated:

11-14-91


Bernard D. Craig
Presiding Chair
Public Arbitrator

7/14/91

Alan C. Fite

Alan C. Fite
Public Arbitrator

Douglas Y. Curran
Industry Arbitrator

11/14/91

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