

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Nancy Lee Watkins

91-00761

Name of Respondents

Dean Witter Reynolds, Inc., and  
John T. Garmany, Jr.

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REPRESENTATION

Claimant Nancy Lee Watkins was represented by W. Brooke Hawkins, Esq., Chattanooga, Tennessee.

Respondents, Dean Witter Reynolds, Inc. and John T. Garmany, Jr. were represented by George D. Sullivan, Esq. of Dean Witter Reynolds, Inc., New York, New York.

CASE INFORMATION

The Statement of Claim was filed with the NASD on March 11, 1991.

Claimant's Submission Agreement was signed on March 1, 1991 by Nancy Lee Watkins.

A Joint Statement of Answer was filed with the NASD by Respondents, Dean Witter Reynolds, Inc. and John T. Garmany on November 12, 1991.

Respondents Dean Witter Reynolds, Inc. and John T. Garmany, Jr. did not file Submission Agreements with their Answer.

HEARING INFORMATION

Hearing Date: February 11, 1992 for three (3) sessions.

Hearing Location: Nashville, Tennessee.

CASE SUMMARY

Claimant Nancy Lee Watkins ("Watkins") alleged that losses occurred in her securities account maintained at Respondent Dean Witter Reynolds, Inc. ("Dean Witter") as the result of unsuitable investments, breach of fiduciary duty and other fraudulent activity. Watkins alleged that she placed \$30,000 into a Western Savings & Loan Certificate of Deposit, \$12,000 into a Dean Witter single premium deferred annuity and purchased a \$10,000 interest in the Dean Witter Realty Yield Plus II, real estate limited partnership. In January 1989 Watkins alleged that the proceeds from the CD were used to purchase Dean Witter High Yield Fund ("bond fund"). Thereafter, Watkins alleged that she borrowed from her annuity and against the high yield fund. Respondent John T. Garmany, Jr. ("Garmany") allegedly never advised her of the tax consequences of these loans. Watkins alleged that the bond fund was unsuitable for her given her financial and family situation. Watkins alleged that the actions of Dean Witter and Garmany violated state and federal securities laws, constituted breach of contract and breach of fiduciary duty and asserted that Dean Witter failed to supervise its broker, employee Garmany.

Dean Witter and Garmany specifically denied each allegation of the Claim. Garmany advised Watkins that higher yielding investments were higher in risk and these investments were consistent with Watkins's investment objectives of maximizing return on her investment. Dean Witter and Garmany alleged that Watkins knowingly chose to assume the higher risks for a potential greater return on her investments.

RELIEF REQUESTED

Watkins requested \$17,891.53 for monies lost in the high yield fund and \$6,585.12 for losses on the annuity, excessive commissions, pre-judgment interest, opportunity loss of \$15,000, rescission of the limited partnership in the amount of \$10,000, punitive damages, attorney's fees and other costs.

Dean Witter and Garmany requested dismissal of the claim in its entirety with an award of costs and fees to them from Watkins.

OTHER ISSUES CONSIDERED & DECIDED

Respondents Dean Witter and Garmany did not file with the NASD properly executed submissions to arbitration but are required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure ("NASD Code") and having answered the claim, appeared and testified at the hearing. Dean Witter and Garmany are bound by the determination of the arbitration panel on all issues submitted.

At the beginning of the hearing, Watkins asserted a motion to bar Dean Witter and Garmany from presenting any facts or defenses to the claim pursuant to Section 25(b) (2) (iii) of the NASD Code due to an untimely filed answer. The panel denied the motion and Garmany and Dean Witter's Joint Answer were accepted by the panel and they were allowed to defend the Claims.

After the hearing had concluded and prior to the award being signed by the panel, Watkins' Counsel requested that the record be supplemented with a letter dated January 2, 1992. This letter addressed to the NASD Arbitration Department requested that Dean Witter and Garmany be denied the opportunity to defend the claim on the basis of an untimely answer to the claim. Additionally, Watkins' Counsel requested that he be allowed to submit his itemized billing invoices for his time spent on the matter in support of his request for attorney's fees. Dean Witter and Garmany's counsel filed with the NASD a letter of objection to these requests. The NASD Arbitration Department forwarded both letters to the panel for a ruling.

The panel determined not to supplement the record having heard argument on the motion to bar at the hearing and denied same. The panel also determined not to receive the attorney's time records.

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 at the hearing and considering the request to submit post-hearing filings to the panel, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Dean Witter and Garmany are jointly and severally liable for, and shall pay to Watkins, the sum of Twenty Thousand Five Hundred Dollars and no cents (\$20,500.00) as compensatory damages;
2. No pre-judgment interest is awarded on the above sum;

3. The claim for punitive damages is specifically denied; and
4. The parties shall each bear their own costs and expenses, including any attorney's fees incurred in this matter.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed. The NASD shall retain the \$200.00 claim filing fee and hearing session deposit of \$750.00 paid to the NASD by Watkins. Dean Witter is assessed additional forum fees of \$1500.00 and shall directly reimburse Watkins for the \$950.00 in fees she deposited with the NASD to initiate this arbitration matter.

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

Concurring Arbitrators' Signatures  
Name

Robert S. Patterson, Esq.  
Presiding Chairman/Public Arbitrator

Lee Cowen  
Lee Cowen  
Public Arbitrator/Panelist

\_\_\_\_\_  
Dated

3/16/92  
Dated

\_\_\_\_\_  
R. Thomas Barksdale  
Industry Arbitrator/Panelist

\_\_\_\_\_  
Dated

Date Award Served by the NASD: \_\_\_\_\_

3. The claim for punitive damages is specifically denied; and
4. The parties shall each bear their own costs and expenses, including any attorney's fees incurred in this matter.

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Concurring Arbitrators' Signatures  
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\_\_\_\_\_  
Robert S. Patterson, Esq.  
Presiding Chairman/Public Arbitrator

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Lee Cowan  
Public Arbitrator/Panelist

\_\_\_\_\_  
Dated

*R. Thomas Barisdale*  
\_\_\_\_\_  
R. Thomas Barisdale  
Industry Arbitrator/Panelist

*Mar. 16, 1992*  
\_\_\_\_\_  
Dated

Date Award Served by the NASD: \_\_\_\_\_

3. The claim for punitive damages is specifically denied; and
4. The parties shall each bear their own costs and expenses, including any attorney's fees incurred in this matter.

**FORM FEE**

Pursuant to Section 430 of the Code of Arbitration Procedure, the following Form Fees are assessed. The NASD shall retain the \$200.00 claim filing fee and hearing session deposit of \$750.00 paid to the NASD by Watkins. Dean Witter is assessed additional forum fees of \$1500.00 and shall directly reimburse Watkins for the \$950.00 in fees she deposited with the NASD to initiate this arbitration matter.

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

**Consenting Arbitrators' Signatures****Name**

Robert S. Patterson, Esq.  
Presiding Chairman/Public Arbitrator

3/26/92  
**Dated**

\_\_\_\_\_  
Ian Chenn  
Public Arbitrator/Panelist

\_\_\_\_\_  
**Dated**

\_\_\_\_\_  
R. Thomas Richards  
Industry Arbitrator/Panelist

\_\_\_\_\_  
**Dated**

Date Award Served by the NASD: \_\_\_\_\_