

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Landon Speyer and Pauline Speyer

91-00882

Name of Respondent(s)

Dean Witter Reynolds, Inc.
William Stern, Jr.

REPRESENTATION

For Claimants: Landon Speyer and Pauline Speyer were represented by Gerald S. Siegmyer, Esq. of Richie & Greenberg, P.C., Houston, Texas.

For Respondents: Dean Witter Reynolds, Inc. and William Stern, Jr. were represented by Curt H. Mueller, Esq. of Dean Witter Reynolds, Inc., San Francisco, California.

CASE INFORMATION

Statement of Claim filed: March 19, 1991

First Amended and Restated Statement of Claim filed: August 15, 1991

Second Amended and Restated Statement of Claim filed: September 23, 1991

Claimants' Submission Agreement signed on: April 8, 1991 by Landon Speyer and Pauline Speyer

Joint Statement of Answer filed by Respondents Dean Witter Reynolds, Inc. and William Stern, Jr. on: June 10, 1991

Respondent Dean Witter Reynolds, Inc.'s Submission Agreement signed on: June 6, 1991 by Judith M. Rosenberg, Esq. as Vice President and Senior Attorney, Dean Witter Reynolds, Inc.

Respondent William Stern, Jr.'s Submission Agreement signed on: June 21, 1991

HEARING INFORMATION

Pre-Hearing Conference: None Held

Hearing Date/Sessions: October 17, 1991 for three (3) sessions

Hearing Location: Houston, Texas

CASE SUMMARY

Claimants Landon Speyer and Pauline Speyer ("Speyer") alleged that Respondent William Stern, Jr. ("Stern"), while employed by or acting as an agent for Respondent Dean Witter Reynolds, Inc. ("Dean Witter"), induced the Speyers into investing in the following five limited leasing partnerships offered by Dean Witter:

Name	Date Purchased	Amount
1. Falcon Classic Cable	8-8-89	\$22,000.00
2. Aircraft Income	3-6-89	\$15,000.00
3. Dean Witter Realty Income Partnership IV	11-30-88	\$25,000.00
4. U.S. Equipment III	3-21-87	\$60,000.00
U.S. Equipment III	6-30-87	\$31,500.00
5. U.S. Equipment II	11-22-85	\$10,000.00

The Speyers alleged that Stern misrepresented the investments by assuring Claimants that they would receive a good rate of return and would receive, at a minimum, their original investment and possibly twice the original investment upon sale of the partnership assets. The partnerships have continued to decline in value. The Speyers further alleged that the investments were unsuitable given Stern's knowledge that the Speyers desired a liquid, low risk, income oriented investment which would provide a steady cash flow. Claimants maintained that the investments were illiquid, speculative in nature and that the sheltered income aspect of the partnership was useless to them since they had no outside income and were in the lowest tax bracket. Dean Witter's liability was asserted for failure to properly supervise Stern and under the principals of Respondent Superior.

Respondents Dean Witter and Stern denied the material allegations of the Statement of Claim, alleging that:

1. The Speyers' objective was to achieve income, much of which would not be subject to current taxes, and it was in this context that Stern suggested, among other things, investment in the limited partnerships;
2. Over the four year period of investment in the limited partnerships, the Speyers always received a prospectus well in advance of the closing date, discussed the material terms with Stern and understood they were making long-term, illiquid investments;
3. The Speyers enjoyed, and continued to enjoy, the income

generated from these investments, having received approximately \$58,500.00 as of May, 1991;

4. Stern met his obligation to make investment recommendations which were suitable based upon the Speyers' stated investment objectives and financial situation;

5. The Speyers were comfortable and willing to undertake the investment risk disclosed to them;

6. Stern did not make a recommendation as to the amount to be invested in any given partnership, but all decisions in this regard were determined solely by the Speyers;

7. The partnerships were still in existence and there has been no measurable market loss.

In addition, Dean Witter and Stern asserted the following affirmative defenses:

1. The claim is barred by the doctrines of waiver, ratification and estoppel;
2. The claim is barred, in whole or in part, by the applicable statute of limitations and by the doctrine of laches;
3. The claim is barred because Claimants have failed to mitigate their alleged damages.

RELIEF REQUESTED

Claimants initially requested the entry of an award against the Respondents for rescission of the purchase of the partnership interests and the refund of the original investment of \$163,500.00, plus interest and attorneys' fees. In the First Amended Statement of Claim, the request was amended to rescission of their entire amount of partnership investments, or alternatively, an amount equal to the loss that Claimants would suffer if the partnership interests were sold for their fair market value (estimated at \$58,846.00); if the panel awarded rescission, the amount their funds would have earned had they been suitably invested; attorneys' fees and out of pocket costs. In the Second Amended Statement of Claim, the loss claimed was increased to \$84,696.00, the loss the Speyers would suffer if the partnerships were liquidated or sold at their fair market value, in lieu of the \$58,846.00 set forth in the First Amended Statement of Claim.

Respondents Dean Witter and Stern requested that the claim be dismissed in its entirety and that Respondents be awarded reasonable costs and attorneys' fees incurred in defense of the claim.

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.

At the hearing on October 17, 1991, the counsel for Respondents presented a motion for leave to file a post-hearing brief, stating that Claimant had failed to serve the Respondents with copies of the First and Second Amended Statement of Claim. The Claimant did not object as long as they were provided a chance to respond. Based upon the representations of the parties, the panel granted the motion in order to allow Respondents to reply to the new allegations.

AWARD

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

1. Respondents Dean Witter Reynolds, Inc. and William Stern, Jr. are jointly and severally liable for and shall pay to Claimants Landon Speyer and Pauline Speyer the sum of \$49,063.00;

2. In addition, Respondent Dean Witter Reynolds, Inc. is liable for and shall pay to Claimants Landon Speyer and Pauline Speyer the sum of \$67,814.00. Upon receipt of this sum, Claimants Landon Speyer and Pauline Speyer shall immediately cause their entire interest in the following limited partnerships to be transferred to Respondent Dean Witter Reynolds, Inc.:

- a. U.S. Equipment II;
- b. U.S. Equipment III;
- c. Dean Witter Realty Income Partnership IV;
- d. Aircraft Income; and
- e. Falcon Classic Cable;

3. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following total Forum Fees are assessed: Three (3) hearing sessions x \$750.00 = \$2,250.00

The National Association of Securities Dealers, Inc. shall retain the claim filing fee of \$200.00 and refund the hearing session deposit of \$750.00 previously deposited by the Claimants Landon and Pauline Speyer. Respondent Dean Witter Reynolds, Inc. is liable for and shall pay to the NASD forum fees in the sum of \$2,250.00.

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

BY THE ARBITRATION PANEL

Dated:

Gordon W. Hall
Gordon W. Hall, Esq.
Public Arbitrator
Chairperson

January 21, 1992

Charlotte F. Simpson
Charlotte F. Simpson
Public Arbitrator

January 17, 1992

John C. Booth, Jr
John C. Booth, Jr.
Industry Arbitrator

January 22, 1992

Date Served: _____