

N.A.S.D. AWARD

NATIONAL ASSOCIATION  
OF SECURITIES DEALERS, INC.

NATIONAL ASSOCIATION OF SECURITIES DEALERS

RECEIVED

JUN 10 1994

In the Matter of the Arbitration Between

ARBITRATION - CHICAGO

Name of Claimant

Randy Brandt

91-01149

Name of Respondents

Dean Witter Reynolds, Inc.  
Dean Witter Capital Markets

REPRESENTATION

Claimant, Randy Brandt was represented by Andrew S. Friedman, Esq. of Bonnett Fairbourn & Friedman, P.C. of Phoenix, Arizona.

Respondent, Dean Witter Reynolds, Inc. was represented by Joel P. Hoxie, Esq. of Snell & Wilmer of Phoenix, Arizona.

CASE INFORMATION

The Statement of Claim was filed with the National Association of Securities Dealers, Inc. ("NASD") on April 11, 1991.

Claimant, Randy Brandt's Submission Agreement was signed on April 29, 1991 by Randy Brandt.

The Statement of Answer was filed with the NASD by Respondent, Dean Witter Reynolds, Inc. on October 11, 1991.

Respondent, Dean Witter Reynolds, Inc.'s Submission Agreement was signed on October 10, 1991 by Lorena T. Kern, First Vice President.

HEARING INFORMATION

Pre-Hearing Conferences were held on the following days:

January 18, 1993 for one (1) hearing session;  
March 17, 1993 for one (1) hearing session; and,  
March 19, 1993 for one (1) hearing session.

The hearing took place on the following days:

June 14, 1993 for two (2) hearing sessions;  
June 15, 1993 for two (2) hearing sessions;  
June 16, 1993 for two (2) hearing sessions;  
June 17, 1993 for four (4) hearing sessions;  
June 18, 1993 for two (2) hearing sessions;  
June 19, 1993 for two (2) hearing sessions;  
June 21, 1993 for one (1) hearing session;  
October 6, 1993 for two (2) hearing sessions; and,  
October 7, 1993 for two (2) hearing sessions.

The hearing location was Scottsdale, Arizona.

### CASE SUMMARY

Claimant, Randy Brandt ("Brandt") alleged that Respondents, Dean Witter Reynolds, Inc. and Dean Witter Capital Markets ("Dean Witter") misrepresented material information in connection with the offer and sale of 22,000 shares of Emerald Mortgage Investment Corporation ("EMIC") common stock to Brandt by Dean Witter. Brandt alleged that the sales memorandum represented that the EMIC stock was a suitable investment for income oriented, sophisticated equity or fixed income investors. Following the initial public offering, Dean Witter and EMIC continued to make false representations concerning the safety of the EMIC common stock, the status of the company and the income yield of the stock. Brandt alleged that her monies invested in EMIC common stock had been intended for conservative income-producing investments.

Brandt alleged that the conduct of Dean Witter violated Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C.A. §78j(b) and Rule 10b-5 promulgated thereunder, Article 13 of the Arizona Securities Act, A.R.S. §44-1991 and A.R.S. §13-2301, et seq.

Dean Witter denied all allegations of wrongdoing, including, without limitation that it breached any duty of owing to Brandt, that it made any material misrepresentation or omissions to Brandt, or that it violated Section 10(b) of the Securities Exchange Act or Rule 10b-5 promulgated thereunder; A.R.S. §44-

1991; or A.R.S. §13-2301, et seq.

Dean Witter alleged that the claim involved the purchase of a single common stock, Emerald Mortgage Investment Corporation ("EMIC") by a successful, highly compensated and sophisticated stockbroker at Dean Witter. Brandt purchased 20,000 shares of EMIC stock at \$10 per share on or about July 20, 1988 at the initial public offering. Brandt sold her stock at a historically low trading price despite Dean Witter's "hold" recommendation. Dean Witter alleged that Brandt chose to ignore this recommendation and determined to liquidate her holdings, a decision which she now regrets. Dean Witter asserted that Brandt and not Dean Witter must bear the responsibility for this decision.

#### **RELIEF REQUESTED**

Brandt requested damages in excess of \$165,000.00, expenses, treble damages pursuant to the Arizona RICO Statute, statutory interest at the rate of 10% from the time of the investment, attorney's fees and costs.

Dean Witter requested dismissal of the claim in its entirety.

#### **PROCEDURAL ISSUES**

Following the hearing, and prior the decision in this matter, the chairperson recused himself from the panel based upon the appearance of a conflict of interest. The parties were advised that the former chairperson resigned and pursuant to §24 of the NASD Code of Arbitration Procedure the case would be decided by the remaining arbitrators unless there was an objection within five (5) business days of the notification of the vacancy on the panel. There was an objection and the NASD thereafter appointed a replacement chairperson. The replacement chairperson reviewed the documentary evidence and listened to the tape recorded hearing record before this award was issued.

#### **AWARD**

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

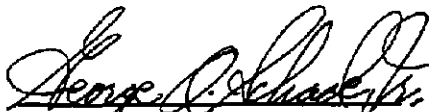
1. Brandt's claim asserted against Dean Witter is denied and dismissed in its entirety; and,
2. The parties shall each bear their respective costs, expenses and attorney's fees incurred in this matter.

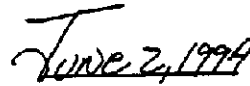
**FORUM FEES**

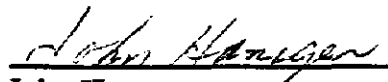
Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed. The NASD shall retain the \$250.00 non-refundable claim filing fee and the \$1,000.00 hearing session deposit previously deposited with the NASD by Brandt. Dean Witter is assessed and shall pay to the NASD additional Forum Fees in the amount of \$9,950.00 and Brandt is assessed additional Forum Fees in the amount of \$8,950.00.

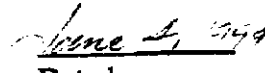
Forum Fees were assessed at the rate of \$300.00 per hearing session for each of the three (3) pre-hearing conferences and \$1,000.00 per hearing session for each of the nineteen (19) hearing sessions held in this matter. Additional Forum Fees assessed against the parties shall be paid to the NASD.

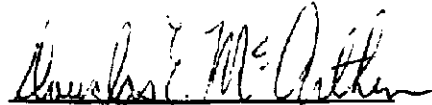
**Concurring Arbitrators' Signatures**

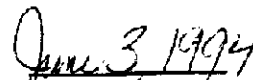
  
George A. Schade, Jr., Esq.  
Presiding Chairperson  
Public Arbitrator

  
Dated

  
John Hansgen  
Panelist  
Public Arbitrator

  
Dated

  
Douglas E. McArthur  
Panelist  
Industry Arbitrator

  
Dated

Date Award Served on the Parties by the NASD: 6-13-94