

## NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of  
Securities Dealers, Inc.  
NASD Financial Center  
33 Whitehall Street  
New York, N.Y. 10004  
FAX (212) 858-4389

In the Matter of the Arbitration Between

Name of Claimant

Suzanne H. Breen

vs.

Case#

91-01245

Name of Respondents

Dean Witter Reynolds Inc.  
Gruntal & Co., Inc.

REPRESENTATION

For Claimant Suzanne H. Breen ("Breen"), Andrew S. Sidman, Esq. of the law firm of Butler, Fitzgerald & Potter, P.C.

For Respondent Dean Witter Reynolds Inc. ("Dean Witter"), George D. Sullivan, Esq. of Dean Witter Reynolds, Inc.

For Respondent Gruntal & Co., Inc. ("Gruntal"), Kevin T. Rover, Esq. and John O'Donnell, Esq. of the law firm of Morgan, Lewis & Bockius.

For Respondent Erwin Allen Porges ("Porges"), Charles M. O'Rourke, Esq. of the law firm of Charles M. O'Rourke.

CASE INFORMATION

Statement of Claim filed on April 19, 1991.

Claimant's Submission Agreement signed on April 11, 1991.

Statement of Answer filed by Respondent Dean Witter on August 19, 1991.

Statement of Answer filed by Respondent Gruntal on July 29, 1991.

Statement of Answer filed by Respondent Porges dated July 8, 1991.

Respondent Dean Witter's did not execute a Submission Agreement. Respondent Gruntal's Submission Agreement signed on March 26, 1992.

Respondent Porges' Submission Agreement signed on July 3, 1991.

HEARING INFORMATION

Hearing Dates/Sessions: March 26, 1992, 2 Sessions.  
March 27, 1992, 2 Sessions.  
April 2, 1992, 2 Sessions.  
June 23, 1992, 2 Sessions.  
June 24, 1992, 2 Sessions.

Hearing Location: National Association of Securities Dealers, Inc. ("NASD") located in New York, NY.

CASE SUMMARY

Claimant alleged that she was an unsophisticated investor and relied completely on Forges, her account representative at Dean Witter and later at Gruntal, for her investment decisions. Claimant further alleged that while Forges handled her account at Dean Witter and later at Gruntal, Forges churned her accounts to generate commissions for himself, Dean Witter and Gruntal; purchased securities for the account that were unsuitable in light of Claimant's investment objectives; engaged in unsuitable trading, in that, he heavily margined Claimant's accounts and traded in options though Claimant did not remember signing an options agreement with either Dean Witter or Gruntal; engaged in unauthorized trading; and made omissions regarding the effects and circumstances concerning his handling of her accounts. Claimant further alleged that Respondents were liable to Claimant for violations of the Securities Exchange Act section 10(b) and Rule 10b-5; common law fraud; breach of fiduciary duty; breach of contract; and negligence. Claimant further alleged that Respondents Dean Witter and Gruntal failed to supervise Forges within the meaning of section 20(a) of the Securities Exchange Act.

Respondent Gruntal maintained that Claimant was aware of and authorized the trading in her account and expressed satisfaction with Forges' performance as her account executive. Gruntal further maintained that Claimant signed an options agreement; that Claimant was an experienced investor; and that Forges spoke with Claimant frequently to review her holdings. Gruntal further maintained that Claimant received confirmations on each trade and monthly statements and that she executed and returned to Gruntal letters acknowledging that she was aware of the speculative nature of the trading in her account.

Respondent Dean Witter maintained that all of the transactions in Claimant's account were suitable; that Claimant was continuously appraised of her account status through trade confirmations, monthly statements and product prospectuses; and that while her account was with Dean Witter she stated on a number of occasions that she was satisfied with her account executive, Forges, and his handling of her account. Respondent Dean Witter alleged as defenses that all transactions were consistent with Claimant's investment objectives and financial goals; that all transactions were made with Claimant's knowledge, authorization and consent; that Claimant was estopped from asserting her claim; and that Claimant ratified and approved the transactions in her account. Dean Witter further alleged as defenses that it made no misrepresentations or omissions of material fact; there was no intent by Dean Witter to defraud Claimant; market conditions and events outside of Dean Witter's control may have caused Claimant's alleged losses; at all times relevant Dean Witter maintained reasonable and adequate supervisory procedures; and that Claimant failed to state a valid claim upon which relief could be granted.

RELIEF REQUESTED

Claimant requested an award as follows:

1. The sum of \$134,944.00, or as otherwise proven at arbitration, together with interest, against Forges and Dean Witter jointly and severally for actual damages incurred during the period Claimant maintained an account with Dean Witter.
2. The sum of \$1,000,000.00 in punitive damages against Forges and Dean Witter.
3. The sum of \$182,852.00, or as otherwise proven at arbitration, together with interest, against Forges and Gruntal jointly and severally for actual damages incurred during the period Claimant maintained an account with Gruntal.
4. The sum of \$1,000,000.00 against Forges and Gruntal, jointly and severally, in punitive damages.
5. All costs, including reasonable attorneys' fees, incurred in prosecuting this arbitration.
6. Such other relief as the arbitrators shall determine is just and proper.

Respondent, Gruntal, requested that the claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

The panel considered a motion to sever Respondent Forges. The panel decided that since Forges filed for Chapter 13 bankruptcy on March 13, 1992 he was in fact a non-party and the motion to sever was moot. The panel directed Forges to appear as a witness pursuant to their powers under section 33 of the Code of Arbitration Procedure.

Respondent Dean Witter settled with the Claimant at the start of the hearing.

AWARD

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

Respondent is liable and shall pay to Claimant the sum of One Hundred Eighty Thousand One Hundred Forty One Dollars and No Cents (\$180,141.00) representing loss on investments plus Twenty Five Thousand Two Hundred Four Dollars and No Cents (\$25,204.00) representing interest.

OTHER COSTS

The Claimant requested, by letter dated December 9, 1991, a postponement of the hearings scheduled for January 8 and 9, 1992 to allow Claimant to complete discovery. The panel granted Claimant's request and assessed a \$1,000.00 postponement fee to be borne equally by each of the parties. Therefore, each of the parties is assessed a postponement fee of \$250.00. Dean Witter and Gruntal paid their portion of the fee. However, Claimant did not pay her portion of the fee.

FORUM FEES

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

1. Claimant is assessed a non-refundable filing fee of \$250.00.
2. Claimant deposited \$1,250.00 with the NASD and will receive a credit for that amount. Claimant is entitled to a refund of \$750.00.
3. Forum fees in the amount of \$10,000.00 for 10 sessions at \$1,000.00 per session are to be borne by Respondent Gruntal.
4. Therefore, Respondent shall pay to the NASD the sum of \$9,250.00 to represent forum fees and shall pay Claimant \$750.00 to reimburse Claimant for Claimant's hearing session deposit.

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

ARBITRATION PANEL

Richard W. Vallario, Esq.	-	Chairperson/Public
Dr. Richard E. Weber	-	Public
Stephen J. Storen	-	Industry

Concurring Arbitrator's Signature



Richard W. Vallario, Esq.

Date of Decision: August 10, 1992

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