

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Efrem Barkham

v

SI-01283

Dean Witter Reynolds, Inc.

REPRESENTATION

For Claimant: William F. Davis, Esq.

For Respondent: Robert T. Sullwold, Esq. of Orrick Herrington & Sutcliffe

CASE INFORMATION

Statement of Claim filed: April 23, 1991

Claimant's Submission Agreement signed on: April 10, 1991

Statement of Answer filed by Respondent on: June 6, 1991

Respondent's Submission Agreement signed on: June 3, 1991

HEARING INFORMATION

Pre-Hearing Conference : None

Hearing Dates/Sessions: February 20, 1992 - Two Sessions,  
February 21, 1992 - Two Sessions.  
Four Sessions Total.

Hearing Location: Los Angeles, California

CASE SUMMARY

Claimant, Efrem Barkham (Barkham) alleged that Respondent, Dean Witter Reynolds (DWR) recommended that Barkham purchase 9,100 units of Asset Investors Corp.; 10,000 units of American South West Mortgage Investment and 10,000 units of Emerald Mortgage Investment Corp. (now known as Homeplex Mortgage Investments). Barkham alleged that such recommendations were neither suitable nor consistent with his expressed investment objectives.

Respondent alleged that SWR sent Barkham a confirmation slip after every purchase or sale in his account as well as a monthly statement showing each of the transactions occurring in that account. Barkham did not complain to DWR that any transaction was inconsistent with his investment objectives or financial circumstances. Barkham complained only about the security whose price had declined the greatest since his purchase. Barkham is thereby barred from raising his claims of unsuitability by the doctrines of waiver, estoppel and ratification.

#### RELIEF REQUESTED

Claimant requested: Special damages relating to the improper investments according to proof, but not less than \$154,520.00, punitive damages of not less than \$300,000.00, interest, costs and attorneys' fees.

Respondent requested: Dismissal of the claim in its entirety, costs and fees.

#### OTHER ISSUES CONSIDERED AND 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 original(s) remain on file with the NASD.

#### AWARD

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

1. Respondent, Dean Witter Reynolds, Inc. is liable and shall pay to Claimant, Efrem Barkham, the sum of One Hundred Fifty-Four Thousand, Five Hundred Twenty Dollars Exactly (\$154,520.00) plus interest on said amount at the rate of 7% per annum from March 1, 1989 until paid in full.
2. Claimant's claim for punitive damages is denied.
3. The parties shall each bear their respective costs and fees, including attorneys' fees.

#### FORUM FEES

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

Forum fees Assessed Against: Claimant, Efrem Barkham, in the amount of \$750.00 representing an assessment of one-half of the fees assessed for four hearing sessions at \$750.00 each, less the \$750.00 previously deposited with the NASD.

Forum fees assessed Against: Respondent, Dean Witter Reynolds, Inc., in the amount of \$1,500.00, representing an assessment of one-half of the fees assessed for four hearing sessions at \$750.00 each.

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

ARBITRATION PANEL

Name

Aaron Fenton  
Rachford Harris  
Ruth G. Lavell

Public/Industry  
Public Chairperson  
Industry  
Public

Concurring Arbitrators' Signatures

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*Ruth G. Lavell*

Date of Decision: 21 Feb 1992

Served 3/18/1992