

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Diana Altwein

91-01586

Name of Respondents

Dean Witter Reynolds, Inc.  
William Katz

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**REPRESENTATION**

For Claimant, Diana Altwein ("Altwein"): Richard Levenstein, Esq. of Heimberg, Heimberg, Rader, & Levenstein.

For Respondents, Dean Witter Reynolds, Inc. ("DWR"), and William Katz ("Katz"): George Sullivan, Esq. of DWR.

**CASE INFORMATION**

Statement of Claim filed: May 22, 1991.

Claimant's Submission Agreement signed on: May 16, 1991.

Joint Statement of Answer filed by Respondents, DWR and Katz on December 29, 1992.

Respondents' Submission Agreements signed: February 17, 1994 by Katz and by George D. Sullivan as Assistant Vice President and Sr. Attorney of DWR.

**HEARING INFORMATION**

On January 8, 1993 a Pre-Hearing Conference was conducted in person with two arbitrators.

On February 16 and 17, 1994 in Fort Lauderdale, Florida, hearings lasting four (4) sessions were conducted.

### **CASE SUMMARY**

Claimant, Altwein, alleged that: she and her husband were induced to borrow on margin to purchase investments recommended by Respondent, Katz, and that as a result of those recommendations, Claimant lost money; the recommendations of DWR and Katz with respect to margin borrowing were unsuitable, inappropriate, negligent and in violation of various Know Your Customer Rules of the NASD and various stock exchanges; the actions by Respondents were negligent and in violation of Florida Statute, Chapters, 517, 812 and 772; Respondents' actions constituted, common law fraud, negligent safekeeping, negligent supervision of Katz by DWR, and breach of fiduciary duty.

Respondents, DWR and Katz, alleged that: they did not violate any duty owed to the Claimant; all investments were suitable for her stated financial goals and financial status; all risks were fully disclosed to Claimant and she knowingly chose to assume such risks; no misrepresentations were made by either DWR or Katz; the losses complained of were caused by market forces beyond the control of Respondents; DWR had reasonable and adequate supervisory procedures; and, that all common law tort claims are barred by Florida's Economic Loss Rule. Respondents set forth the affirmative defenses of, waiver, laches, estoppel, ratification, statute of limitations, and failure to state a cause of action.

### **RELIEF REQUESTED**

Claimant, Altwein, requested damages in the amount of principal lost of \$30,000.00 plus attorneys fees in the stipulated amount of \$8,500.00, costs of \$150.00 and such other relief the panel deems just and proper.

Respondents, DWR and Katz, requested dismissal of all claims.

### **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.

### 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. Respondents, DWR and Katz, are found not liable and, therefore, all claims against them are hereby dismissed.
2. Claimant's requests for attorney's fees and costs are denied.

### OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including attorneys fees.

### FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$2,000.00 (1 pre-hearing conference x \$400 plus 4 hearing sessions x \$400.00)
2. Claimant is assessed \$1,000.00 for which the NASD shall retain the \$400.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$600.00.
3. Respondents, jointly and severally, are hereby assessed \$1,000.00.
4. Claimant shall also pay the \$400.00 postponement fee previously assessed for the postponement of the hearing scheduled for January 8, 1993 and the \$800.00 postponement fee previously assessed for the postponement of the hearing scheduled for March 19, 1993.

5. The NASD shall retain the postponement fee previously paid by Respondents for postponement of the hearing scheduled for August 26, 1992. Respondents, jointly and severally, are hereby assessed \$800.00 for the postponement of the hearing scheduled for December 16 and 17, 1994.

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

Concurring Arbitrators' Signatures

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Diane M. Perry, Esq., Chairperson

Public

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Elaine Feldman, Esq.

Public

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Michael R. Alford, Esq.

Industry

Date of Decision: 3/29/94