

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Bobbie Joe McLennon and
Darleen McLennon

No. 91-01721

Name of Respondents

Dean Witter Reynolds, Inc.
James M. Tallen

REPRESENTATION OF PARTIES

For Claimants: Sally J. Whiteside, Esq. of Lindquist & Vennum,
Minneapolis, Minnesota.

For Respondents: Tom Nelson, Esq. and William Hittler, Esq. of
Popham Haik Schnobrich & Kaufman, Ltd., Minneapolis, Minnesota.

CASE INFORMATION

Statement of Claim filed: June 3, 1991.

Claimants' Submission Agreement signed on: May 22, 1991.

Joint Statement of Answer filed by Respondents, Dean Witter
Reynolds, Inc. and James M. Tallen on: August 19, 1991.

Respondent Dean Witter Reynolds, Inc.'s Submission Agreement
signed on: August 22, 1991.

Respondent James M. Tallen's Submission Agreement signed on:
August 23, 1991.

HEARING INFORMATION

Hearing dates: May 28, 1992. Two (2) sessions.
May 29, 1992. Two (2) sessions.

Hearing Location: Minneapolis, Minnesota.

CASE SUMMARY

Claimants, Bobbie Joe McLennon and Darlene McLennon ("Claimants") alleged: Violations of Section 10 (b) of the Securities and Exchange Act of 1934 and Rule 10b-5 promulgated thereunder; breach of contract; unsuitable investments; breach of fiduciary duty; negligence; violation of Section 20 (a) of the Securities Act of 1934; violation of Section 80A.23, Subd.3 of the Minnesota Securities Act; and violations of Section 27, Article III of the Rules of Fair Practice of the National Association of Securities Dealers by respondents Dean Witter Reynolds, Inc. ("DWR") and James Tallen ("Tallen"). The allegations arose out of transactions in the following securities: Century Pension Fund XXIII; National Lease Income Fund 4; Quinoco Income Partnership; Quinoco Pension Partnership; Dean Witter U.S. Government Securities Trust; and Dean Witter Option Income Trust.

Claimants alleged that their stated investment objectives were conservation of principal and receiving a rate of return of 10 percent on their investments. Claimants also alleged that Tallen invested their life savings in speculative securities, including limited partnerships and funds which had no performance history. Moreover, Claimants asserted that Tallen made misrepresentations to them concerning the rate of returns of the securities listed above, and also alleged that they did not receive prospectuses for the Century Pension Fund XXIII, the National Lease Income Fund 4, Quinoco Income Partnership, and Quinoco Pension Partnership prior to the securities being purchased by Tallen. Claimants also alleged that they were misled as to the maturity dates of their investments by Tallen.

In their joint Statement of Answer, DWR and Tallen denied each and every allegation contained in the Statement of Claim. In addition, DWR and Tallen asserted the following defenses:

1. The investments were not unsuitable. Claimants sought retirement income, and that is what their investments have provided. It was Claimants that requested DWR and Tallen to sell off certain "blue-chip" stocks to purchase limited partnerships and bond funds.

2. Claimants fail to state a claim under the securities laws.

3. There was no breach of contract.

4. There can be no breach of fiduciary duty. Under Minnesota Law, the relationship between a broker and a customer is not a fiduciary one.

5. The Claimants fail to state a claim for negligence.

6. There can be no claim against DWR under the Minnesota Securities Act.

7. The Claimants have waived their rights. Their acquiescence in owning the above-listed investments, and in accepting the high income these investments produced should be held to construe a waiver of their rights.

RELIEF REQUESTED

Claimants requested:

1. Payment of their actual damages in an amount of \$277,011.80 against respondents DWR and Tallen.

2. Punitive damages in an amount equivalent to compensatory damages against respondents DWR and Tallen.

3. Reasonable attorneys' fees and costs.

4. Such other proper and equitable relief allowed bylaw and as the panel deemed just and equitable.

Respondents DWR and Tallen requested that Claimants' Statement of Claim be dismissed. The respondents further requested an award of all costs and reasonable attorney's fees for defending this claim.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed by 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 and the 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 James Tallen are jointly and severally liable for, and shall pay to claimants, Bobbie Joe McLennon and Darleen McLennon, the sum of \$205,000.00. The payment shall be made on the condition that claimants Bobbie Joe McLennon and Darleen McLennon transfer to respondents Dean Witter Reynolds, Inc. and James Tallen their interest in National Lease Income Fund 4 (\$30,000.00), Century Pension Income Fund XXIII Domestic Notes (\$65,000.00), Investor Units (\$50,000.00), and Quinoco Oil & Gas Income Program III (\$30,000.00). Claimants, Bobbie Joe McLennon and Darleen McLennon, shall retain all distributions from the above-listed investments paid prior to the transfer. The figures listed above are the original purchase price of the securities.

2. Claimants', Bobbie Joe McLennon and Darleen McLennon, claims for attorneys' fees, punitive damages, and interest are hereby denied and dismissed with prejudice.

3. Each party shall bear their own costs of this arbitration, including attorneys' fees, except as set forth more fully below.

FORUM FEES

Pursuant to Section 43 (c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

4 hearing sessions X \$1,000.00 = \$4,000.00

Pursuant to Section 43 (c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of

\$250.00, and shall retain the hearing session deposit in the amount of \$1,000.00 previously paid to the NASD by the claimants.

Additional forum fees in the amount of \$1334.00 are assessed against respondent Dean Witter Reynolds, Inc.

Additional forum fees in the amount of \$1,333.00 are assessed against respondent James Tallen.

Additional forum fees in the amount of \$333.00 are assessed against claimants Bobbie Joe McLennon and Darleen McLennon.

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

CONCURRING ARBITRATORS

Dated:

July 8, 1992

/s/Stephen P. Kelley
Stephen P. Kelley
Presiding Chair
Public Arbitrator

July 9, 1992

/s/Cassandra Mihalchick
Cassandra Mihalchick
Public Arbitrator

July 9, 1992

/s/Emily B. Boote
Emily B. Boote
Industry Arbitrator

Date Served by the NASD:

7-14-92