

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Stanley F. Smidt, Jr.

vs

NASD #91-02399

Dean Witter Reynolds, Inc.  
David G. Walters

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REPRESENTATION

For Claimant: William P. Torngren, Esq. - Bartel Eng Miller & Torngren

For Respondent: Kenneth C. Mennemair, Esq. - Orrick, Herrington & Sutchiffe

CASE INFORMATION

Statement of Claim filed: August 5, 1991

Claimant's Submission Agreement signed on: June 28, 1991

Joint Statement of Answer filed by Respondents on October 2, 1991

Respondent, David G. Walters' Submission Agreement signed on: September 12, 1991

Respondent, Dean Witter Reynolds, Inc.'s Submission Agreement signed on: October 1, 1991

HEARING INFORMATION

Pre-Hearing Conference : None

Hearing Dates/Sessions: April 7, 1992 - Two Sessions  
April 8, 1992 - Three Sessions

Hearing Location: San Francisco, California

CASE SUMMARY

Claimant, alleged that Respondent, David G. Walters (Walters), while employed by Respondent, Dean Witter Reynolds, Inc. (DWR), breached his fiduciary duty to Claimant, Stanley F. Smidt, Jr. (Smidt), by making unsuitable investment recommendation in high yield funds without informing Smidt as to the high risk nature of such investments.

Respondents alleged that Smidt had expressly indicated to Walters that he wanted to purchase the same fund that his friend, also a client of DWR, had purchased. Said transaction was, therefore, unsolicited by Walters.

Respondents also alleged that the high yield funds, at the time of the sales, were appropriate for Walters since the historical record at that time suggested that the risk attendant upon the lower-rated bonds was more than compensated for by the greater income generated.

#### RELIEF REQUESTED

Claimant requested: Rescission of all transactions involving High Yield and High Income Advantage Trust I and II and return of claimant's investment in those securities of \$299,988.93, plus ten percent (10%) interest from the date of the investments, less any payments received by claimant on these securities, emotional distress damages in an amount to be determined at arbitration, punitive damages, attorneys' fees and costs.

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

#### 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. Respondents, Dean Witter Reynolds, Inc. and David G. Walters, are jointly and severally liable and shall pay to Claimant, Stanley F. Smidt, Jr., the sum of Seventy Two Thousand, Seven Hundred Ten Dollars and No Cents (\$72,710.00.)
2. Claimants claim for punitive damages is denied.
3. The parties shall each bear their respective costs and fees, including attorneys' fees.
4. The NASD shall retain the \$750.00 hearing session deposit paid by Claimant.

#### OTHER COSTS

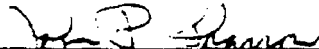
#### FORM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Form Fees are assessed:

Forum fees Assessed Against: Respondent, Dean Witter Reynolds, Inc., is solely assessed and shall pay to the NASD the sum of \$3,750.00 representing an assessment of fees for five hearing sessions at \$750.00 per session.

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

Concurring Arbitrators' Signatures

  
John P. Sparrow

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12, 1992

Date of Decision: April 15, 1992