

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Name of Claimant

John J. Glennon, Jr.

No. 91-02594

Name of Respondent

Dean Witter Reynolds, Inc.

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REPRESENTATION OF PARTIES

For Claimant: Jeffrey L. Liddle, Esq., of Liddle, O'Connor, Finkelstein & Robinson, New York, New York.

For Respondent: Paul Dutka, Esq., of Skadden, Arps, Slate, Meagher & Flom, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: August 20, 1993.

Claimant, John J. Glennon, Jr.'s Submission Agreement signed on: July 13, 1991.

Statement of Answer, Affirmative Defenses and Counterclaim filed by Respondent Dean Witter Reynolds, Inc. on or about: November 25, 1991.

Respondent Dean Witter Reynolds, Inc.'s Submission Agreement signed on: January 7, 1992.

Claimant, John J. Glennon, Jr.'s Reply to Affirmative Defenses and Counterclaim filed on or about: December 23, 1991.

Claimant, John J. Glennon, Jr.'s Amended Statement of Claim filed on or about: March 17, 1992.

Answer and Affirmative Defenses to Additional Claims filed on or about: April 8, 1992.

### HEARING INFORMATION

Pre-Hearing conference and deposition dates:

July, 22, 1992. One (1) session.  
January 5, 1993. One (1) session.  
February 8, 1993. One (1) session.

Hearing dates: October 26, 1992. Two (2) sessions.

October 27, 1992. One (1) sessions.

December 15, 1992. Two (2) sessions.

December 16, 1992. Two (2) sessions.

December 17, 1992. Two (2) sessions.

February 17, 1993. Two (2) sessions.

February 18, 1993. Two (2) sessions.

February 19, 1993. Two (2) sessions.

August 17, 1993. Two (2) sessions.

August 18, 1993. Two (2) sessions.

August 19, 1993. One (1) session.

Hearing Location: Nashville, Tennessee.

### CASE SUMMARY

Claimant, John J. Glennon, Jr. ("Claimant") alleged that Respondent, Dean Witter Reynolds, Inc. ("Respondent") discharged Claimant from his position as branch manager in retaliation for Claimant's refusal to condone the illegal activities occurring in the Nashville branch office. Claimant also alleged that he suffered from emotional distress as a result of Respondent's retaliatory discharge. Claimant further alleged violations of Tennessee law and public policy by Respondent's retaliatory discharge of him as branch manager of the Nashville branch office. Claimant also alleged that Respondent had failed to pay him recruitment bonuses that should have been paid to him in September of 1987. Lastly, Claimant alleged that Respondent had failed to pay a finder's fee which should have been paid to him in January of 1989.

In its Answer, Respondent denied each and every allegation, claim and item of damages set forth in the Statement of Claim not expressly admitted by Respondent. Respondent also asserted the following affirmative defenses:

1. The Statement of Claim fails to state any claim on which relief may be granted.
2. The Statement of Claim is barred, in whole or in part, by the applicable statute of limitations.
3. Claimant was not removed from his position as branch manager, or terminated from Respondent, because he refused to condone or participate in illegal activity. Claimant did not report any improper activities. Claimant was transferred from his position because of his

unsatisfactory job performance as branch manager. Respondent did not discharge Claimant. Instead, he became an account executive. Respondent offered Claimant a generous compensation package to help him through the transition to account executive. Claimant was discharged because he refused, after due demand, to repay monies to Respondent that had been paid to him in error.

4. The Statement of Claim is barred by the doctrines of waiver, estoppel, ratification and laches.

5. As a matter of law, there can be no recovery for some or all of the items of compensatory and punitive damages claimed or for attorneys' fees.

6. Claimant failed to mitigate his damages, if any.

7. Respondent did not willfully, or otherwise, withhold from Claimant any compensation, bonus, incentive, finder's fees, wage, or any other monies that were due to him.

8. As a matter of law, neither the recruitment bonus nor the finder's fee to which Claimant asserts entitlement constitute wages within the meaning of the N.Y. Labor Law.

9. As a matter of law, Claimant was not an employee within the meaning of the New York Labor Law.

10. Claimant was not involved in any meaningful or compensable way in recruiting and is not entitled to a recruitment bonus.

11. The individuals that joined Respondent, whom Claimant alleges he recruited, were not included within the scope of the applicable recruitment bonus policy.

12. Three of the individuals who joined Respondent, whom Claimant alleges he recruited, were employed by Respondent for only thirteen months. Under the applicable recruitment policy, any bonus that was paid could, therefore, have been charged back.

13. The deal, which certain of the account executives who reported to Claimant while he was branch manager of Respondent's Tampa office, brought into Respondent, based on which Claimant asserts

14. Any damages that Claimant suffered are subject, in whole or in part, to setoff by Respondent's claims against Claimant based on his refusal to return to Respondent monies that Respondent paid to him in error.

In its Counterclaim, Respondent alleged that in order to ease Claimant in his transition from branch manager to account executive, Respondent agreed to provide Claimant with a guaranteed monthly income as well as an annual expense allotment of \$2,500.00 per year. Respondent asserted that Claimant had been fully aware of the compensation package, including the expense allotment. Respondent stated that due to an accounting error, Claimant was actually paid \$2,500.00 per month as his expense allotment. Respondent further asserted that Claimant neither notified Respondent of the error, nor did Claimant return the monies. Respondent further stated that on several occasions after Respondent had realized the error, had demanded that Claimant return the overage. Lastly, Respondent stated that Claimant admitted to having been overpaid, and that Claimant has refused to repay the monies.

For his Reply to Respondent's Affirmative Defenses and Counterclaim, Claimant denied the allegations contained in paragraphs 1 - 19, 21, 22, and 24 - 28. Claimant admitted the allegations contained in paragraphs 20, and 23 of Respondent's Affirmative Defenses and Counterclaim. Claimant also asserted the following affirmative defense:

1. Any amount that Claimant may owe to Respondent is substantially less than the amounts which Respondent owes, and has long owed to, Claimant, and, therefore, is subject to setoff by Claimant's claims against Respondent.

In his Amendment to the Statement of Claim, Claimant asserted a claim for defamation against Respondent based on the allegation that Respondent deliberately caused further harm to the Claimant by publishing a false statement in Claimant's Form U-5, which had been filed in connection with Claimant's termination of employment with Respondent. Claimant alleged that Respondent had answered question 15 of the Form U-5 affirmatively in a knowing, malicious, and material misrepresentation as the grounds for Claimant's termination. Lastly, Claimant alleged that Respondent had made the statement in the Form U-5 because Claimant refused to condone Respondent's illegal activities at the Nashville branch office.

Respondent denied each and every allegation, claim and item of damages set forth in the Amendment that it did not expressly admit in its Answer. In addition, Respondent asserted the following affirmative defenses:

1. The Amendment fails to state a claim upon which relief may be granted.
2. Respondent did not engage in any wrongful, willful or malicious conduct in connection with its completion of the U-5 in issue. Nor was Respondent attempting to extract revenge from Claimant when it completed this notice. Respondent was obligated by regulatory

requirements to prepare a U-5 on Claimant's termination and truthfully provide the information sought thereby. Respondent fulfilled that obligation, including by answering item 15 in the affirmative.

3. Respondent's statements on the U-5 are privileged and do not provide the basis for claims in defamation.

4. Respondent's statement on the U-5 are true and do not provide the basis for claims in defamation.

5. As a matter of law, there can be no recovery for some or all of the items of compensatory and punitive damages.

6. Claimant failed to mitigate his damages, if any.

7. Any damages that Claimant suffered are subject, in whole or in part, to setoff by Respondent's claims against Claimant based on his refusal to return to Respondent monies the Respondent paid to him in error.

#### RELIEF REQUESTED

Claimant requested the following: 1) For his claim of retaliatory discharge, Claimant requested damages of not less than \$3,670,000.00, discounted to present value, plus the amounts owed to him in connection with his deferred bonuses; 2) \$1,000,000.00 in damages for emotional distress as a result of the retaliatory discharge; 3) punitive damages in the amount of not less than \$1,000,000.00; 4) a recruitment bonus of \$40,074.00; 5) liquidated damages in the amount of an additional 25% of the amounts wrongfully withheld from Claimant by Respondent pursuant to Section 198(1-a) of the New York Labor Law; 6) costs and attorneys' fees under section 198(1-a) of the New York Labor Law; 7) a finder's fee of \$2,450.51; and 8) pre-award interest.

Respondent requested judgement against the Claimant dismissing the Statement of Claim in its entirety and with prejudice and awarding Respondent \$22,500.00 on its Counterclaims, its costs and attorneys' fees, as well as such other and further relief as under the circumstances the panel deemed to be just and proper.

Claimant requested judgement against Respondent dismissing the Counterclaim in its entirety and with prejudice and awarding Claimant the amount set forth in his Statement of Claim, as well as such other and further relief as the panel deemed just and proper.

In his Amendment to the Statement of Claim, Claimant further requested, in connection with his defamation claim, the following: 1) Compensatory damages of not less than \$10,000,000.00; 2) punitive damages of not less than \$10,000,000.00; 3) an order requiring Respondent to amend Claimant's Form U-5 to correct the

statement made therein; and 4) such additional and further relief as the arbitrators deemed just and proper.

In its Answer to Claimant's additional claims, Respondent demanded judgement against Claimant, dismissing the Amendment with prejudice and awarding Respondent its costs and attorneys' fees, as well as such other and further relief as under the circumstances the panel deemed to be proper and just.

#### 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 original(s) 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. Respondent, Dean Witter Reynolds, Inc. is liable for, and shall pay to Claimant, John J. Glennon, Jr. the sum of \$2,450.51 plus interest at the rate of 6% from August 28, 1987 until October 5, 1993, as satisfaction for his finder's fee claim.

2. Respondent, Dean Witter Reynolds, Inc. is liable for, and shall pay to Claimant, John J. Glennon, Jr. the sum of \$40,074.00 plus 6% interest from August 28, 1987 until October 5, 1993, as satisfaction for his recruitment bonus claim.

3. Respondent, Dean Witter Reynolds, Inc. is hereby directed to change the language on Claimant, John J. Glennon, Jr.'s U-5 to correct the false statement contained therein. The language shall be corrected to "Dispute over compensation".

4. Claimant, John J. Glennon, Jr. is liable for, and shall pay to Respondent, Dean Witter Reynolds, Inc. the sum of \$22,500.00 plus interest at the rate of 6% from May 1, 1991 until October 5, 1993, as satisfaction of its Counterclaim herein.

5. Claimant's claims for punitive damages, emotional distress, and retaliatory discharge are hereby denied and

dismissed with prejudice.

6. Respondent, Dean Witter Reynolds, Inc. is liable for, and shall pay to Claimant, John J. Glennon, Jr. the sum of \$213,878.71 as satisfaction for his claim for attorneys' fees. The authority for the award of attorneys' fees is contained in Claimant's post-hearing brief.

7. Respondent, Dean Witter Reynolds, Inc. is liable for, and shall pay to Claimant, John J. Glennon, Jr. the sum of \$728,250.00 as satisfaction for his defamation claim relating to language placed on his Form U-5.

8. Respondent, Dean Witter Reynolds, Inc. is liable for, and shall pay to Claimant, John J. Glennon, Jr. the sum of \$750,000.00 as satisfaction for his claim in relation to Claimant's defamation claim. The authority for the award of punitive damages can be found in Tennessee law as cited in Claimant's post-hearing brief.

#### OTHER COSTS

Each party shall pay its own costs and expenses associated with this arbitration, including attorneys' fees, except as set forth more fully below.

#### FORUM FEES

Pursuant to Section 44(c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

3 pre-hearing conference sessions x \$300.00 = \$900.00

20 hearing sessions x \$600.00 = \$18,000.00

Pursuant to Section 44(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$500.00, and shall the hearing session deposit in the amount of \$1,500.00 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$3,225.00.00 are assessed against the Claimant.

Pursuant to Section 44(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$600.00 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$13,575.00 are assessed against the Respondent.

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

CONCURRING ARBITRATORS

Dated:

Oct 5, 1993

Name:

Milton H. Sitton  
Milton H. Sitton  
Presiding Chair  
Industry Arbitrator

Oct. 8, 1993

Clarence Albert Getchell, III  
Clarence Albert Getchell, III  
Industry Arbitrator

October 5, 1993

George C. Bolton, Jr.  
George C. Bolton, Jr.  
Industry Arbitrator

Date of Service by the NASD: 10-6-93