

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

MAY - 1992

Name of Claimant

Earlene Danner

91-02597

Name of Respondent

Dean Witter Reynolds, Inc.

REPRESENTATION OF PARTIES

Claimant was represented by Diane A. Nygaard, Esq., Overland Park, Kansas.

Respondent was represented by Wendy R. Robinson, Esq. of Dean Witter Reynolds, Inc., San Francisco, California.

CASE INFORMATION

The Statement of Claim was filed on or about August 21, 1991. Amended Statement of Claim filed on or about February 14, 1992.

Claimant's Submission Agreement signed on June 27, 1991.

Statement of Answer filed by Respondent Dean Witter Reynolds, Inc. on or about October 25, 1991.

Respondent Dean Witter Reynolds, Inc.'s Submission Agreement signed on October 21, 1991 by Wendy R. Robinson.

HEARING INFORMATION

The hearing was held on Wednesday, March 25, 1992 in Kansas City, Missouri for a total of three (3) sessions.

CASE SUMMARY

Claimant alleged that her broker made material misrepresentations in connection with the purchase and sale of stocks, limited partnership interests; the investments were wholly unsuitable for her; that the broker misrepresented the reasons for each trade; and churned the account. Claimant specifically alleged that the investments were not in accordance with representations made and were unsuitable to her objectives, trading was excessive in light of her objectives to preserve principal and receive income.

In the Amended Statement of Claim, Claimant set forth claims of violations of the Missouri Securities Act, fraud and misrepresentation, negligence, breach of contract and violation of NASD Rules, breach of fiduciary duty, and Missouri Merchandising Practices Act.

Respondents stated that the investments were suitable and made pursuant to the Claimant's requests for higher yielding investments. Respondents also stated that the Claimant fully understood the risks she was accepting. Respondents further stated that the claims asserted herein were time barred by the applicable statutes of limitations; are barred by the doctrines of ratification, estoppel, waiver and laches; and that the claimant failed to mitigate her damages.

RELIEF REQUESTED

Claimant requested an award of the difference between the current value of the securities in her account at Dean Witter Reynolds, Inc. and the value of her account had it been invested in a suitable manner. These damages are estimated at \$10,000.00. Claimant also requested an award of punitive damages, attorney's fees and costs.

Respondents requested that the claims be dismissed in their entirety and that they be awarded their reasonable costs.

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 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. shall be and hereby is liable for and shall pay to the Claimant Earlene Danner the sum of \$8,163.42 (Eight Thousand One Hundred Sixty Three Dollars and Forty Two Cents).
2. Simple interest at the rate of 9% per annum from and inclusive of October 20, 1991 to and inclusive of the date this award is paid in full is awarded on the above stated sum. The panel has considered Missouri statutes in making this award of interest.
3. Respondent Dean Witter Reynolds, Inc. shall be and hereby is liable for and shall pay to the Claimant Earlene Danner the sum of \$1,085.00 (One Thousand Eighty Five Dollars) as reimbursement of expert witness fees and costs.
4. Each party shall bear its own costs, expenses and attorney's

fees incurred in this matter not specifically enumerated herein.

5. No punitive damages are awarded herein.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$250.00 and shall retain the hearing session deposit in the amount of \$600.00 previously deposited with the NASD by the Claimant as forum fees and Respondent shall pay to the NASD the sum of \$1,200.00 as forum fees. Respondent shall reimburse to the Claimant the sum of \$600.00 which represents the hearing session deposit made by the Claimant.

Forum fees are calculated at the rate of \$600.00 per hearing session.

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

Dated:

April 27, 1992

s/s Mark S. Foster, Esq.
Presiding Chair
Public Arbitrator

April 27, 1992

Julian M. Levitt, Esq.
Public Arbitrator

April 24, 1992

Walter E. Knowles
Industry Arbitrator

NASD decision rendered: May 14, 1992