

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Michael N. Darius

91-03007

Name of Respondent(s)

Dean Witter Reynolds Inc.

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REPRESENTATION

For Claimant: Roger M. Deitz, Esq. of New York City.

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

CASE INFORMATION

Statement of Claim filed: September 26, 1991.

Claimant's Submission Agreement signed on: July 13, 1991.

Statement of Answer filed by Respondent on: November 29, 1991.

Respondent's Submission Agreement signed on: November 20, 1991.

HEARING INFORMATION

Hearing Dates/Sessions: March 19, 1992 and March 20, 1992/four sessions

Hearing Location: Boston, Massachusetts

CASE SUMMARY

Claimant Michael N. Darius alleged that Respondent Dean Witter Reynolds, Inc. negligently handled and mismanaged his accounts, failed to execute index options orders the Claimant placed which would have been fruitful to him, executed trades in the Claimants' accounts that he did not place without disclosing the trades to the Claimant, and failed to follow the Respondent's own compliance procedures in handling his accounts. Respondent Dean Witter Reynolds, Inc. maintained that the Claimant was aware of all trading that occurred in his account, that the Claimant continued to deal with one of his

account executives after a history of problems had developed, and that the Respondents did not mislead regulators regarding the events in the Claimant's accounts. Respondents further maintained that the Claimant's accounts had lost money and never had a large return on any option position.

#### RELIEF REQUESTED

Claimant requested actual damages of \$585,000.00, RICO damages of \$1,755,000.00, punitive damages of \$500,000.00, plus interest and attorneys' fees. Respondent requested that the claims of the Claimant be dismissed.

#### 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 all issues submitted for determination as follows:

- (1) Respondent Dean Witter Reynolds, Inc. is liable and shall pay to the Claimant Michael N. Darius the sum of Ninety Nine Thousand Dollars and No Cents (\$99,000.00).
- (2) The Claimant's claim for RICO damages is denied.
- (3) The Claimant's claim for punitive damages is denied.

#### OTHER COSTS

The parties shall each bear their respective costs, including attorneys' fees.

#### FORUM FEES

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

- (1) The NASD, Inc. shall retain the \$1,000.00 hearing session deposit previously deposited by the Claimant.
- (2) Respondent Dean Witter Reynolds, Inc. is assessed \$1,000.00 in forum fees.

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

Concurring Arbitrators' Signatures



Peter Dale, Esq. (chairperson)

Public Arbitrator

John Thompson

Public Arbitrator

Robert Wyman

Industry Arbitrator

Dated: May 1, 1992

Concurring Arbitrators' Signatures

Peter Dale, Esq. (chairperson)

Public Arbitrator

John R. Thompson  
John Thompson

Public Arbitrator

Robert Wyman

Industry Arbitrator

Executed

Dated: 4-28-92

NASD DECISION DATE: May 1, 1992

Concurring Arbitrators' Signatures

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Peter Dale, Esq. (chairperson)

Public Arbitrator

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John Thompson

Public Arbitrator

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Robert Wyman

Industry Arbitrator

Executed

Dated: 4/28/92

NASD DECISION DATE: May 1, 1992