

N.A.S.D. ARBIT

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Harold & Lucile Thies

91-03093

Name of Respondents

Dean Witter Reynolds, Inc.  
Mel Lehmann

REPRESENTATION

For Claimants: Kevin D. Hofman, Esq., Attorney At Law, Minneapolis, Minnesota.

For Respondents: Richard A. Rogoff, Esq. of Dean Witter Reynolds, Inc., San Francisco, California.

CASE INFORMATION

Statement of Claim filed: October 2, 1991.

Claimants's Submission Agreement signed on: September 27, 1991.

Joint Statement of Answer filed by Respondents on: December 17, 1991.

Respondent, Dean Witter Reynolds, Inc.'s Submission Agreement signed on: December 9, 1991.

HEARING INFORMATION

Pre-Hearing Conference: April 23, 1992 for one (1) session with Chairman.

Hearing Dates/Sessions: July 6, 1992 for two (2) sessions,  
July 7, 1992 for two (2) sessions.

Hearing Location: Minneapolis, Minnesota.

CASE SUMMARY

Claimants Harold and Lucile Thies ("the Thieses") alleged that Respondent Dean Witter Reynolds, Inc. ("Dean Witter") through its agent, Respondent Mel Lehmann ("Lehmann") purchased securities which were unsuitable for the Thieses conservative investment objective. The Thieses further alleged that they were unsophisticated investors who were interested in good,

safe, and secure investments. The Thieses alleged that Lehmann purchased Dean Witter High Yield Securities Fund and Dean Witter's High Income Advantage Trust II, junk bond funds.

Respondents Dean Witter and Lehmann alleged that the risks of the said investments were disclosed by Lehmann to the Thieses before they made their purchases in the said funds. Dean Witter and Lehmann further alleged that the funds which Lehmann recommended paid substantial income over time and were suitable when purchased.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$100,410.54, punitive damages, triple punitive damages of \$301,231.62, interest on all damages awarded, and any other further relief as the arbitrators deem just and equitable.

Respondents requested that the Statement of Claim be dismissed in its entirety.

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 the issues submitted for determination as follows:

1. The Respondents, Dean Witter Reynolds, Inc. and Mel Lehmann, shall be and hereby are jointly and severally liable for and shall pay to the Claimants, Harold and Lucile Thies, compensatory damages in the sum of Twenty Seven Thousand Four Hundred Seventy Four Dollars and No Cents (\$27,474.00);
2. The Respondents, Dean Witter Reynolds, Inc. and Mel Lehmann, shall be and hereby are jointly and severally liable for and shall pay to the Claimants, Harold and Lucile Thies, pre-judgment interest at six percent (6%) from September 21, 1990 until the date the Award is served by the NASD;
3. The Respondents, Dean Witter Reynolds, Inc. and Mel Lehmann, shall be and hereby are jointly and severally liable for and shall pay to the Claimants, Harold and Lucile Thies, attorney's fees in the sum of Nine Thousand Dollars (\$9,000.00) and attorney's costs in the sum of Nine Hundred Seventy Nine Dollars (\$979.00). Attorney's fees and costs were awarded under the authority of MSA Section 80A;

4. The Claimant's claim for punitive damages and triple punitive damages is denied;

5. Each of the parties shall bear their own costs and expenses incurred, other than those specifically enumerated herein.

OTHER COSTS

Respondents Dean Witter Reynolds, Inc. and Mel Lehnman, are jointly and severally liable for and shall pay to the Claimants, Harold and Lucile Thies, expert witness fees at One Thousand Dollars (\$1,000.00) a day, for two (2) days, for a total of Two Thousand Dollars (\$2,000.00).

FORUM FEES

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

4 sessions X \$750.00 = \$3,000.00 minus hearing session deposit of \$750.00 = \$2,250.00 plus 1 Pre-hearing conference session = \$300.00 = net \$2,550.00 due.

Forum fees Assessed Against Claimants in the amount of \$1,275.00 and against Respondents, jointly and severally, in the amount of \$1,275.00.

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

BY THE ARBITRATION PANEL:

Dated:

D. Randall Blom, Esq.  
D. Randall Blom, Esq., Chairperson  
Public Arbitrator

7-23-92

Angela R. Benge, Esq.  
Angela R. Benge, Esq.  
Public Arbitrator

Paul J. McDough, Jr.  
Paul J. McDough, Jr.  
Industry Arbitrator

Date Award Served By The NASD: \_\_\_\_\_

4. The Claimant's claim for punitive damages and triple punitive damages is denied;

5. Each of the parties shall bear their own costs and expenses incurred, other than those specifically enumerated herein.

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BY THE ARBITRATION PANEL:

Dated:

D. Randall Bloch, Esq., Chairperson  
Public Arbitrator

Angela R. Banga  
Angela R. Banga, Esq.  
Public Arbitrator

Paul J. McGough, Jr.  
Industry Arbitrator

Date Award Served By The NASD: \_\_\_\_\_

7/24/92

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

**BY THE ARBITRATION PANEL:**

Dated: \_\_\_\_\_

D. Michael Allen, Esq., Chairman  
Public Arbitrator

Angela L. Smith, Esq.  
Public Arbitrator

Paul J. Smith, Jr.  
Industry Arbitrator

July 27, 1992

Date Award Served By The NASD: \_\_\_\_\_