

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Ralph A. and Virginia B. Shaw, individually and
Ralph A. and Virginia B. Shaw, as trustees of
the Shaw Trust

91-03147

Name of Respondents

Dean Witter Reynolds, Inc.,
Henry Westberry and
Gary Hofer

REPRESENTATION

Claimants, Ralph A. Shaw, Virginia B. Shaw and Ralph A. Shaw and Virginia B. Shaw as Trustees of the Shaw Trust, were represented by Michael Raymond, Esq. and Kathleen Coughenour, Esq. of Jennings, Kapner & Haug, Phoenix, AZ.

Respondents, Dean Witter Reynolds, Inc., Henry Westberry and Gary Hofer, were represented by Joseph Maize, Esq. of Brown and Bain, Phoenix, AZ.

CASE INFORMATION

The Statement of Claim was filed with the NASD on October 28, 1991.

The Claimants', Ralph A. Shaw and Virginia B. Shaw, Submission Agreements as individuals were signed on September 12, 1991 and the Claimant's, Ralph A. Shaw and Virginia B. Shaw as Trustees of the Shaw Trust, Submission Agreement was signed on October 24, 1991.

The Joint Statement of Answer was filed with the NASD by Respondents, Dean Witter Reynolds, Inc., Henry Westberry and Gary Hofer, on December 24, 1991.

Respondent, Dean Witter Reynolds, Inc.'s Submission Agreement was signed on December 23, 1991 by Richard A. Rogoff.

Respondent, Henry Westberry's Submission Agreement was signed on December 27, 1991 by Henry Westberry.

Respondent, Gary Hofer's Submission Agreement was signed on January 23, 1992 by Gary Hofer.

HEARING INFORMATION

The hearing was held on Monday, June 1, 1992 for three (3) hearing sessions and on Tuesday, June 2, 1992 for two (2) hearing sessions. The hearing location was Scottsdale, AZ.

CASE SUMMARY

Ralph A. Shaw, Virginia B. Shaw and Ralph A. Shaw and Virginia B. Shaw as Trustees of the Shaw Trust ("Claimants") alleged securities fraud, common law fraud, intentional misrepresentation, negligent misrepresentation and breach of fiduciary duty by Dean Witter Reynolds, Inc., Henry Westberry and Gary Hofer ("Respondents") arising out of purchases of Dean Witter's High Yield Securities Fund ("High Yield"), Dean Witter's High Income Advantage Trust II mutual fund ("Income Trust"), Philadelphia Electric and Chemical Bank Corporation by Claimants. Claimants also alleged that Respondents failed to disclose the risks and the highly speculative nature of these investments to the Claimants. Claimants further alleged that Respondents failed to disclose that the investments were unsuitable for the Claimants and that the products were recommended to generate commissions for the Respondents.

In their Joint Statement of Answer, the Respondents denied any liability or wrongdoing to the Claimants. Respondents alleged that the investments were suitable when recommended to the Claimants. The Respondents alleged that the losses incurred by Claimants were due to unforeseen market forces and market risks. The Respondents asserted the following affirmative defenses: the claims are barred by the doctrines of waiver, estoppel and laches and/ or the applicable Statute of Limitations. In addition, the Respondents asserted that they committed no act or omission that would justify an award of actual or punitive damages. Respondents alleged the Claimants were fully informed of the potential risks in High Yield and Income Trust and Claimants' injury, if any, was caused by the Claimants' own conduct and/ or the conduct of persons other than the Respondents.

RELIEF REQUESTED

The Claimants requested the arbitrators to enter an award in their favor and against the Respondents as follows:

1. Damages in the amount of \$55,318.79 which included actual damages and interest thereon at the highest legal rate,
2. Consequential damages,
3. Costs of the arbitration,
4. Reasonable attorney's fees, and
5. Punitive damages in the amount of \$250,000.00.

The Respondents requested that the Statement of Claim be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be entered 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 Claimants', Ralph A. and Virginia B. Shaw, individually and as trustees, Claims against the Respondents, Dean Witter Reynolds, Inc., Henry Westberry and Gary Hofer, are hereby denied and dismissed with prejudice, and
2. Each of the parties shall bear their own costs and expenses incurred in this matter, including attorneys' fees,

FORUM FEES

The following Forum Fees are assessed: 5 hearing sessions X \$750.00 per session = \$3,750.00 minus the Claimant's hearing session deposit of \$750.00 = net \$3,000.00 due to the NASD.

Pursuant to Section 43(c) of the NASD Code, the NASD shall retain the claim filing fee in the amount of \$200.00 and retain the hearing session deposit in the amount of \$750.00 previously paid to the NASD by the Claimants.

Additional Forum Fees in the amount of \$1,125.00 are assessed against the Claimants. Additional forum fees in the amount of \$1,875.00 are assessed against Dean Witter. Additional Forum Fees assessed to the parties are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures

Name

Date

/S/ Richard L. Basinger
Richard L. Basinger, Esq.
Chairman/Public Arbitrator

July 9, 1992

/S/ Bernard W. Slater
Bernard W. Slater
Public Arbitrator

June 18, 1992

/S/ Marvin J. Klein
Marvin J. Klein
Industry Arbitrator

June 20, 1992

Date award served by the NASD: _____