

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Sharon Hart

NASD Arbitration
No. 91-03195

Name of Respondents

Dean Witter Reynolds Inc.
Joseph Schmidt

Consolidated with

Name of Claimants

Dean Miller

NASD Arbitration
No. 91-03196

Name of Respondents

Dean Witter Reynolds Inc.
Joseph Schmidt

REPRESENTATION

For Claimants: Keith A. Ketterling, Esq. - Stoll, Stoll, Berne & Likting, P.C. -
Portland, Oregon

For Respondents: Thomas V. Dulcich, Esq. - Schwabe, Williamson & Wyatt -
Portland, Oregon

CASE INFORMATION

Statements of Claim filed: October 11, 1991

Amended Statement of Claim filed by Claimant, Dean Miller, on April 29, 1992

Amended Statement of Claim filed by Claimant, Sharon Hart, on May,13, 1992

Claimants' Submission Agreements signed: October 8, 1991

Statements of Answer filed by Respondent, Dean Witter Reynolds, Inc. on January 31, 1992

Statements of Answer filed by Respondent, Joseph Schmidt, on March 2, 1992

Respondent, Dean Witter Reynolds, Inc.'s Submission Agreement signed: January 31, 1992

HEARING INFORMATION

Hearing Dates/Sessions: March 9, 1993 - Two Sessions
 March 10, 1993 - Three Sessions

Hearing Location: Portland, Oregon

CASE SUMMARY

CLAIM No. 91-03195

Claimant, Sharon Hart (Hart), alleged that Respondent, Joseph Schmidt (Schmidt) while employed by Respondent, Dean Witter Reynolds, Inc., (DWR) made unauthorized, excessive and unsuitable trades in index options with the use of margin, and generally, treated the Hart account in a manner inconsistent with Hart's investment objectives.

Respondent, Schmidt, alleged that Hart's greatest loss arose from options trading, which had been explained to her by Schmidt. Schmidt also contends that Hart was given a personal explanation and was provided with a booklet describing options and options trading and the associate risks. Schmidt also alleged that Hart always seemed to understand the concept of margin balance, what the equity or net worth was in her account, and the losses or profits in trading that had occurred.

Respondent, DWR, denied the allegations of churning, breach of fiduciary duty, negligence, punitive damages, unsuitability, discretionary trading without authorization, and other charges of wrongdoing alleged in the claim. DWR contended that the majority of losses Hart sustained were the result of unforeseen market forces and not the result any actionable wrongdoing.

CLAIM No. 91-03196

Claimant, Dean Miller (Miller), alleged that Respondent, Schmidt, traded in index options, representing to Miller that these were sound investments which would provide excellent returns with little risk. It is also alleged that said trading was excessive, unauthorized and was unsuitable when viewed in connection with Miller's objectives and financial resources. It is also alleged that the trading activity was margined and that the consequences of the use of margin was not adequately explained to Miller.

Respondent, Schmidt, denied the allegations of churning, breach of fiduciary duty, negligence, punitive damages, unsuitability, discretionary trading without authorization, and the other unfair and inaccurate charges made against him by Miller. Miller had control of his account, and when the market was good, it was profitable, however, when the market turned against the investments, the account lost money. It is alleged that Schmidt was giving his best, professional effort on behalf of his customer and the allegations of intentional misconduct and racketeering are baseless.

Respondent, DWR, denied the allegation of churning, breach of fiduciary duty, negligence, punitive damages, unsuitability, discretionary trading without authorization, and the remaining charges of wrongdoing. The majority of losses Miller sustained were the result of unforeseen market forces (i.e. Black Monday), and not the result of any actionable wrongdoing. DWR also alleged that Miller participated in the selection of his investments, waited more than four years before bringing this arbitration, and never expressed any complaint to DWR that the trading in his account was inconsistent with his investment objectives or financial situation.

RELIEF REQUESTED

CLAIM NO. 91-03195

Claimant, Hart, seeks to recover damages in the approximate amount of at least \$100,000.00, treble and punitive damages, attorney fees and prejudgment interest.

Respondents, Schmidt and DWR, seek dismissal of the claim in its entirety.

CLAIM NO. 91-03196

Claimant, Miller, seeks damages in the approximate amount of \$93,000.00, treble and punitive damages, attorneys' fees and prejudgment interest.

Respondents seek dismissal of the claim in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

By way of his answer, Schmidt alleged that he and Miller became involved in a business venture involving baseball collectibles which included the issuance of a \$5,000.00 promissory note by Schmidt to Miller. To resolve a dispute which arose regarding the collectible business, Schmidt offers to return to Miller his entire inventory of sports cards or Miller may sell his portion of the sports card inventory to Schmidt or Schmidt will pay to Miller the sum of \$5,000.00 with interest only until the time the dispute arose.

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:

CLAIM NO. 91-03195

1. Respondent, Dean Witter Reynolds, Inc., is liable and shall pay to Claimant, Sharon Hart, the sum of Twenty Two Thousand Five Hundred Dollars and No Cents (\$22,500.00), together with interest thereon at the rate of 9% per annum from March 10, 1993 until paid in full.

2. Respondent, Joseph Schmidt, is liable and shall pay to Claimant, Sharon Hart, the sum of Five Thousand Dollars and No Cents (\$5,000.00), together with interest thereon at the rate of 9% per annum from March 10, 1993 until paid in full.
3. Claimants claim for punitive and/or treble damages is denied.
4. The parties shall each bear their respective costs and fees, including attorney's fees.

CLAIM No. 91-03196

1. Respondent, Joseph Schmidt, is liable and shall pay to Claimant, Dean Miller, the sum of Seventeen Thousand Five Hundred Dollars and No Cents (\$17,500.00) together with interest there on at the rate of 9% per annum from March 10, 1993 until paid in full.
2. Respondent, Dean Witter Reynolds, Inc., is liable and shall pay to Claimant, Dean Miller, the sum of Seventeen Thousand Five Hundred Dollars and No Cents (\$17,500.00) together with interest thereon at the rate of 9% per annum from March 10, 1993 until paid in full.
3. Claimant's claim for punitive and or exemplary damages is denied.
4. The parties shall each bear their respective cost and fees, including attorney's fees.
5. In return for the \$17,500.00 from Joseph Schmidt, Dean Miller will endorse over the Joseph Schmidt the \$5,000.00 note regarding the sports card matter, and Miller will also provide Schmidt with the bill of sale to the sports card inventory. This award also terminates any continuing matter relating to the Create-A-Book venture.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following forum fees are assessed:

1. Claimant, Sharon Hart is assessed and shall pay to the NASD the sum of \$1,125.00, representing one-half of the \$3,750.00 fees assessed, less a credit of \$750.0 for a previous deposit.
2. Claimant, Dean Miller, is assessed and shall pay to the NASD the sum of \$1,125.00, representing one-half of the \$3,750.00 fees assessed, less a credit of \$750.00 for a previous deposit.

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

ARBITRATORS

Public/Industry
Public Chairperson
Public Panelist
Industry Panelist

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Gordon Dean Miller

SERVED 5/18/1993

Date of Decision: May 12 1993