

## N.A.S.D. FINAL ORDER

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of  
Securities Dealers, Inc.  
NASD Financial Center  
33 Whitehall Street  
New York, N.Y. 10004  
FAX (212) 858-4389

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In the Matter of the Arbitration BetweenName of Claimant

Madra Clapp

vs.

Case #  
91-03349

Name of Respondents

Dean Witter Reynolds Inc.  
Jeffrey Brown

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REPRESENTATION

For Claimant, Madra Clapp, pro se.

For Respondents, Dean Witter Reynolds, Inc. and Jeffrey Brown, Richelle Kennedy, Esq. of Bingham, Dana &amp; Gould.

CASE INFORMATION

Statement of Claim filed on October 24, 1991.

Claimant's Submission Agreement signed on October 16, 1990.

Joint Statement of Answer filed by Respondents on February 26, 1992.

Submission Agreement signed by Dean Witter Reynolds, Inc. on January 7, 1992.

Submission Agreement signed by Jeffrey Brown on February 18, 1992.

HEARING INFORMATION

Hearing Date/Hearing Session: May 11, 1992 - One session.

Hearing Location: NASD, Inc.  
260 Franklin Street  
Boston, Massachusetts.

CASE INFORMATION

Claimant alleges that in 1984 or 1985 she opened an account with Dean Witter and that the account executive was William Carney. Claimant further alleges

that when Mr. Carney left, Jeffrey Brown became the account executive and she began to take a more active role in her account. She suggested companies in which she could invest, requested that Brown research these companies and based upon the result of his research, she determined what investment she should make. Claimant states that almost her entire account was on margin and that on Friday October 16, 1987, before she left for a two-week business trip she decided to close out her account because of the volatile stock market. Claimant maintains that she called and left several messages for Brown to call her. She wanted to discuss her positions before she closed out her account. Claimant alleges that Brown did not return her calls as promised. Claimant further alleges that early Monday morning, October 19, 1987, she went on her business trip and was not aware of what was happening in the market until 10:30 p.m. that night. Claimant alleges that on Tuesday morning she had to sell everything to cover the margin calls and that her account went from \$30,000.00 to \$1,700.00.

Claimant also alleges that she had several conversations with Brown and he admitted that he negligently handled her account.

Respondents deny liability, deny that they negligently handled Claimant's account and assert four affirmative defenses. Respondents maintain that they fulfilled their duty to Claimant. Respondents contend that Claimant's losses were solely attributable to the stock market crash of October, 1987. Respondents argue that Claimant's basis for relief is without merit. First, the claim is three years old and that the statute of limitations had expired. Second, if Claimant was able to reach her broker on October 16, 1987 and wanted to liquidate her positions, she could have instructed someone else to do so or call on Monday. Thirdly, Claimant was not dependent on Brown for investment advice and could have acted without talking with him. Respondents further argue that even if Claimant had placed a sell order there were no assurances that they could be executed at any price on Monday. Moreover, Respondents argue that it is likely that she would have lost her entire account, given the size of her margin debit.

#### RELIEF REQUESTED

Claimant requests an award of \$28,000.00 plus interest for the last three years.

Respondents request that the claims be dismissed.

#### OTHER ISSUES CONSIDERED AND DECIDED

Claimant did not appear at the hearing on May 11, 1992. This arbitrator delayed the commencement of the hearing for about one hour. This arbitrator then opened the record and Respondents requested that the case be dismissed with prejudice and that they be awarded costs and expenses. Over Respondents' objections I instructed the NASD to inform Claimant in a letter

dated May 11, 1992, that she had until May 26, 1992 to provide an explanation for her failure to appear at the hearing. If Claimant responded by that date the hearing was to be rescheduled for August 20, 1992 but if he failed to respond by that date, this case would be dismissed and I would entertain Respondents' request for costs and expenses. Claimant did not respond. I instructed the NASD to inform Respondents to submit an affidavit detailing the expenses incurred in the defense of this hearing. By letter dated May 29, 1992, the NASD informed the parties that Respondent should submit such an affidavit. By letter dated June 3, 1992, Respondents advised the NASD that they waive their request for costs and expenses and request that they arbitrator enter an award dismissing this action with prejudice.

ORDER

Based upon the foregoing, all claims asserted by Claimant, Madra Clapp, against Respondents, Dean Witter Reynolds, Inc. and Jeffrey Brown, are hereby dismissed with prejudice.

FORUM FEES

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

1. Claimant is assessed \$100.00 non-refundable filing fee;
2. Claimant is further assessed \$400.00 for one hearing session;

Arbitrator's Signature



Leonard H. Golder, Esq.  
Sole Arbitrator

Date of Decision: July 16, 1992