

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :

Lucille L. Thorndal :

Claimant :

CASE #91-03509
AWARD

vs. :

Dean Witter Reynolds, Inc. :

Alvin Dietz :

Respondents :
-----CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on November 6, 1991, Claimant, Lucille L. Thorndal, by and through her personal representative, William E. Thorndal, alleged that on April 7, 1989 Respondent, Alvin Dietz, an Account Executive with Respondent, Dean Witter Reynolds, Inc. recommended and made the investment of \$15,000.00 in the Dean Witter Reynolds, Inc. High Yield Security Fund by misrepresenting its value; its potential risk of loss and withholding relevant facts about the type of investment, at which time, the investment was set up for Claimant to make withdrawals of \$150.00. Claimant further alleged that this investment was unsuitable because it represented approximately 50% of her total assets and 100% of the funds she invested with Respondent, Dean Witter Reynolds, Inc. Claimant contended that at no time during the three year period did Respondent, Alvin Dietz advise her that the investment was decreasing in value and that the investment was a Junk Bond Fund. Claimant further contended that by November, 1990 the value of the fund had dropped 65% in value, at which time, Respondent, Alvin Dietz sold this investment and reinvested the remaining funds without consulting Claimant. Claimant asserted that Respondent, Alvin Dietz's recommendation of the investment was unsuitable for her investment needs and his inappropriate handling of her account along with Respondent, Dean Witter Reynolds, Inc. failure to supervise, caused Claimant to sustain losses.

Respondents, Dean Witter Reynolds, Inc. and Alvin Dietz, by and through their in-house Jay M. Cutler, Esq., maintained that in July, 1987 Claimant, Lucille L. Thorndal's son opened an account for her behalf and made an unsolicited investment, with the benefit of the prospectus, in the High Yield fund, at which time, Claimant

specifically requested regular monthly withdrawals in the amount of \$150.00. Respondents further maintained that Respondent, Alvin Dietz's advice was neither sought nor given and he was not even aware of the investment for a lengthy period of time because Claimant had made the investment directly through the fund. Respondents contended that in the summer of 1989, the High Yield fund began a sustained decline in value and Claimant received monthly statements directly from the fund which reflected this information. Respondents further contended that on November 24, 1990, Respondent, Alvin Dietz contacted Claimant to advise her of his concern about the fund and recommended that she exchange the shares, without charge, to a money market fund while monitoring the performance of the fund and possibly exchange back if its performance improved, at which time, Claimant instructed Respondent, Alvin Dietz to exchange the shares into a money market fund. Respondents asserted that in mid February 1991, encouraged by developments in the market and the apparent recovery of the fund, Respondent, Alvin Dietz contacted Claimant and recommended a cost-free exchange back into the High Yield fund, at which time, Claimant declined to follow that recommendation and thereby, failed to benefit from the 40% appreciation in the share price. Respondents further asserted that Respondent, Alvin Dietz never recommended the High Yield fund and Respondents, Dean Witter Reynolds, Inc. and Alvin Dietz cannot be held liable for Claimant's losses sustained for the performance for an unsolicited investment.

RELIEF REQUESTED

Claimant, Lucille L. Thorndal requested \$10,000.00 in actual damages.

Respondents, Dean Witter Reynolds, Inc. and Alvin Dietz requested the claim be dismissed and costs be assessed against Claimant.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Douglas J. Nesbit, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on October 28, 1991, by the Respondent, Dean Witter Reynolds, Inc. on December 19, 1991 and by the Respondent, Alvin Dietz on December 24, 1991.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Dean Witter Reynolds, Inc. and Alvin Dietz are jointly and severally liable and shall pay to the Claimant, Lucille L. Thorndal the sum of \$10,765.12 in damages, inclusive of interest.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant, Lucille L. Thorndal shall be retained by the NASD, Inc. Respondents, Dean Witter Reynolds, Inc. and Alvin Dietz are jointly and severally liable and shall pay to the Claimant the sum of \$150.00 as reimbursement.

AFFIRMATION

I, DOUGLAS J. NESBITT, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION:— JUL 14 1992