

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Harvey Jacobson and Barbara Jacobson

Case No. 91-03636

Name of Respondent(s)

Dean Witter Reynolds, Inc.

REPRESENTATION

For Claimants, Harvey and Barbara Jacobson ("Jacobson"): Arnold Y. Steinberg, Esq.

For Respondent, Dean Witter Reynolds, Inc. ("DWR"): Peter J. Aldrich, Esq. of Broom, Kelly & Aldrich.

CASE INFORMATION

Statement of Claim filed: November 15, 1991. Claimants' Submission Agreement signed: November 13, 1991.

Respondent's Statement of Answer filed: April 27, 1992. Respondent's Submission Agreement signed: March 9, 1993 by Richard Denerstein on behalf of DWR.

HEARING INFORMATION

On March 8 and 9, 1993, in Fort Lauderdale Florida, hearings lasting three (3) sessions were conducted.

CASE SUMMARY

Claimants alleged that they are retired persons with no means of replacing or adding to their capital; that their investment objectives were income with minimal risk; that Respondent made misrepresentations of and omitted to state material facts; that Claimants reasonably relied on the representations to their detriment; that Respondent recommended and effected transactions in an unsuitable high yield bond fund; that Respondent's actions constituted violation of Section 10(b) of the 1934 Exchange Act, Section 12(2) of the 1933 Securities Act, 18 U.S.C. Section 1961, and fraud and deceit.

Respondent denied all allegations of wrongdoing and alleged that prior to purchase. Claimants were provided with a prospectus which fully disclosed and explained all risks; that Jacobson was an experienced investor and made all decisions concerning the account; and, that any losses were due solely to Claimants' actions and decisions.

RELIEF REQUESTED

Claimants requested damages in excess of \$250,000.00, plus interest, punitive damages, attorney's fees, and treble damages in the amount of \$750,000.00.

Respondent requested attorney's fees and costs.

OTHER ISSUES CONSIDERED & DECIDED

1. 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.
2. At the beginning of the hearing, the Panel considered arguments on Respondent's Motion to Dismiss for the Claimants' failure to produce documents pursuant to an Order compelling them to do so. The Panel deferred ruling on the Motion, resolved the discovery issues and advised that it may draw negative inferences for the failure to provide documents.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is found not liable and, therefore, all claims against it are hereby dismissed.
2. Claimants' requests for attorney's fees, punitive damages, and RICO damages are denied.
3. Respondents' requests for cost and attorney's fees are denied.

OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$3,000.00 (three sessions x \$1,000.00).
2. Claimants are hereby assessed \$1,500.00, for which the NASD shall retain the \$1,000.00 previously deposited in partial satisfaction thereof, leaving a balance due to the NASD of \$500.00.
3. Respondent is hereby assessed \$1,500.00 payable to the National Association of Securities Dealers, Inc.
4. The Panel has assessed a postponement fee of \$1,000.00 against DWR.
5. The NASD shall also retain the \$250.00 filing fee paid by the Claimant.

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

Concurring Arbitrators' Signatures

/s/
Garry W. O'Donnell, Esq.

Public

/s/
Lewis J. Levey, Esq.

Public

/s/
Richard M. Kowalske

Industry

Date of Decision: MARCH 17, 1993