

Arbitration

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
One East Broward Boulevard
Suite 1000
Ft. Lauderdale, Florida 33301
(305) 522-7391

In the Matter of the Arbitration Between)

Name of Claimant(s))

Marjorie O'Day)

Name of Respondent(s))

Dean Witter Reynolds, Inc.)

Jerry O'Leary)

Case No. 91-03649

REPRESENTATION

Claimant, Marjorie O'Day ("O'Day") was pro se.

For Respondent, Dean Witter Reynolds, Inc. ("Dean Witter") and Jerry O'Leary ("O'Leary"): George Sullivan, Esq. of Dean Witter.

CASE INFORMATION

Statement of Claim filed: November 19, 1991. Claimant's Submission Agreement signed: November 9, 1991.

Respondents' Statement of Answer filed: March 11, 1992. Respondents' Submission Agreements signed: September 4, 1992 by O'Leary, and on September 1992 by George Sullivan on behalf of Dean Witter.

HEARING INFORMATION

on September 4, 1992, in Fort Lauderdale, Florida, a hearing lasting two (2) sessions was conducted.

CASE SUMMARY

Claimant alleged that Respondents were liable for misrepresenting the profitability of a certain mutual fund.

Respondents denied all allegations of wrongdoing and alleged that: Claimant was advised that the price could fluctuate and Claimant was advised of the risks involved.

Respondents alleged affirmative defenses including that: the investment was suitable for Claimant; Claimant authorized all transactions; waiver; estoppel; ratification; no misrepresentations were made; lack of intent of fraud; market conditions caused Claimants losses; Dean Witter had adequate supervision and failure to state a claim.

RELIEF REQUESTED

Claimant requested damages in the amount of \$7,124.72.

Respondents requested dismissal of the claim.

OTHER ISSUES CONSIDERED & DECIDED

Respondent, Dean Witter's, request to add an additional affirmative defense was denied as untimely.

AWARD

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

1. Respondents, Dean Witter and O'Leary, are found liable jointly and severally, and shall pay to the Claimant the amount of \$3,000.00 inclusive of interest.

OTHER COSTS

1. 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 Arbitrator has assessed forum fees in the amount of \$400.00.

2. Claimant is hereby assessed \$200.00 for which the NASD shall retain the \$200.00 previously deposited in full satisfaction thereof.

3. Respondents, Dean Witter and O'Leary, are hereby assessed \$200.00, jointly and severally, payable to the National Association of Securities Dealers, Inc.

4. The NASD shall retain the non-refundable filing fee of \$75.00 paid by the Claimant.

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

Arbitrator's Signature


Diane M. Perry, Esq.

Public

Date of Decision: 9/21/92