

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Mary C. Zinsmeyer

vs.

NASD #91-03717

Name of Respondents

Dean Witter Reynolds, Inc.  
Wayne D. Onel

REPRESENTATION

For Claimant: Jeffrey M. Jones, Esq., of the Law office of Archibald Mull,  
Old Sacramento, California

For Respondents: Curt H. Mueller, Esq., of Dean Witter Reynolds, Inc., San  
Francisco, California

CASE INFORMATION

Statement of Claim filed: November 26, 1991

Claimant's Submission Agreement signed: November 15, 1991

Statement of Answer filed by Respondents on: February 25, 1992

Respondents' Submission Agreements signed on:

Dean Witter Reynolds:	February 25, 1992
Wayne D. Onel:	March 2, 1992

HEARING INFORMATION

Prehearing Conference(s) Date(s) Sessions: None

Hearing Date/ Sessions: December 15, 1992 (two sessions)  
December 16, 1992 (two sessions)

Hearing Location: San Francisco, California

### CASE SUMMARY

Claimant alleged: Violation of Article III, Section Two of the National Association of Securities Dealers, Inc. (NASD) Rules of Fair Practice, (unsuitable recommendations) Sections 10(b), Rule 10b-5 (liability for sales made in violation of the NASD's suitability rules) and Section 29(b) (voids any contract in violation of the Securities Exchange Act 1934) of the Securities Exchange Act of 1934. Claimant also alleged breach of contract (for unsuitable trades, opening of a margin account and unauthorized purchases) breach of fiduciary duty, (failing to follow investment objectives) negligence and fraud.

Claimant invested in excess of \$150,000.00 with respondents beginning in January 1990. Her investment objectives were risk aversion and principal retention. Between January 1990 and the time the claim was filed, respondents conducted several unsuitable trades (unspecified) resulting in losses to claimant in excess of \$150,000.00. Respondents also opened a margin account for claimant in contravention to her investment objectives.

Respondents alleged: Claimant was a 36 year old divorcee who opened her account with respondent Dean Witter Reynolds (DWR) in August 1987. Her New Account form indicated she had a net worth of one million dollars and liquid assets of \$500,000.00. Her objectives were income and speculation, evidenced by her Precious Metal Account.

Claimant sold, in an unsolicited trade, a municipal, tax-free bond which had a seven percent rate of return; she invested the proceeds, approximately \$100,000.00 in the DWR High Yield Fund and received a prospectus in connection with this transaction.

At about the same time in 1988, claimant began to take large sums of cash out of her account, totaling approximately \$130,000.00 for the year. She sold \$100,000.00 worth of tax-free bonds and her High Yield Fund in 1990 and made no purchases in 1991 or 1992.

Respondents denied any wrong doing whatsoever in Claimant's accounts; her objectives were not risk aversion and principal retention, she withdrew large sums of money from her account and bought gold bars on an unsolicited basis.

### RELIEF REQUESTED

Claimant requested:

1. Rescission of all transactions and return of claimant's investment of \$150,000.00, plus ten percent interest from the date of the investments, less any payments received by claimant on the account;
2. Punitive damages;
3. Attorneys' fees; and
4. Costs of suit.

OTHER ISSUES CONSIDERED & DECIDED

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.

Claimant's motion to Amend the claim to request damages of \$76,813.22, made at the arbitration hearing, was granted.

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:

1. Respondent DWR is liable for and shall pay claimant the sum of \$30,000.00 in compensatory damages;
2. All other claims, including those against respondent Wayne D. Onal, are dismissed;
3. There was no finding of unauthorized trading by respondents;
4. The claim for punitive damages is dismissed; and
5. The parties shall each bear their respective costs including attorneys' fees.

OTHER COSTS

None.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following forum fees are assessed: The National Association of Securities Dealers, Inc. shall retain the \$750.00 hearing session deposit previously deposited by the claimant which is assessed against respondent DWR and is to be paid to Claimant. Forum fees assessed against:

Dean Witter Reynolds for \$2,250.00

calculated as follows: Four hearing sessions times \$750.00/hearing sessions = \$3,000.00 minus \$750.00 to be paid directly to claimant a reimbursement for her hearing deposit.

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

ARBITRATION PANEL

Name

Public/Industry

Concurring Arbitrators' Signature

Joanna Leighton, Esq.

Public Arbitrator

Public Arbitrator

Industry Arbitrator

Joanna Leighton  
Joanna Leighton, Esq.

DATE SERVED: 01/05/93

Date of Decision: 1/5/93