

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Alice Flynn

91-03875

Names of Respondents

Dean Witter Reynolds, Inc.
E. Judson Booth

REPRESENTATION

Claimant, Alice Flynn was represented by Robert D. Mitchell, Esq. of Galbut & Associates of Phoenix, Arizona.

Respondents, Dean Witter Reynolds, Inc. and E. Judson Booth were represented by Curt H. Mueller, Esq. of Dean Witter Reynolds, Inc. of San Francisco, California.

CASE INFORMATION

The Statement of Claim was filed with the National Association of Securities Dealers, Inc. ("NASD") by Claimant Alice Flynn on December 19, 1991.

Claimant, Alice Flynn's Submission Agreement was signed on December 17, 1991.

A Joint Statement of Answer was filed with the NASD by Respondents, Dean Witter Reynolds, Inc. and E. Judson Booth on March 18, 1992.

Respondent, Dean Witter Reynolds, Inc.'s Submission Agreement was signed on March 17, 1992 by Curt H. Mueller, Esq.

Although Respondent, E. Judson Booth did not file an executed Submission Agreement with the NASD, he was required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure and he will be bound by the arbitration panel's determination on all issues submitted.

HEARING INFORMATION

The Hearing Date was October 30, 1992 and the hearing lasted for two (2) sessions.

The hearing location was Scottsdale, Arizona.

CASE SUMMARY

Claimant, Alice Flynn, ("Flynn") alleged unsuitability, churning and breach of fiduciary duty on the part of Respondents, Dean Witter Reynolds, Inc. ("DWR") and E. Judson Booth, ("Booth") a broker employed by DWR. Flynn's allegations arise out of the trading activity in her active assets account ("AAA") with DWR.

Flynn asserted that she informed Booth that the income derived from her account was of prime importance to her. Flynn alleged that Booth generated excessive commissions by buying and selling an inordinate amount of common stocks in her account. In addition, Flynn maintained that Booth's advice concerning her account was inappropriate given her specified goals and his investment recommendations resulted in her losing a large amount of money.

In their Joint Statement of Answer, Respondents, DWR and Booth categorically denied any wrongdoing in connection with Flynn's account with DWR. DWR and Booth alleged that Flynn overlooked the fact that she withdrew \$13,000 from her account while it was at DWR. In addition, DWR and Booth asserted that Flynn told Booth that growth and rate of return were her primary investment objectives. According to DWR and Booth, all of the stocks purchased in the account were of relatively high quality and suitable for Flynn's stated investment objectives. DWR and Booth alleged that Flynn discussed each trade with Booth before it took place and that she reviewed her account statements with Booth and his assistant in person and over the telephone and therefore she knew what was happening in her account. DWR and Booth stated that Flynn's account declined in value by approximately 12%. DWR and Booth alleged this loss was due to the fact that certain stocks in Flynn's account responded negatively in light of the recession, and DWR and Booth are not liable for such losses.

In Flynn's Response to the Joint Statement of Answer, Flynn denied that growth and rate of return were her primary investment objectives. In addition, Flynn re-alleged that Booth engaged in excessive trading for the purpose of collecting commissions.

RELIEF REQUESTED

Flynn requested \$35,000.00 in compensatory damages.

DWR and Booth requested that the Statement of Claim be dismissed in its entirety and that they be awarded attorney's fees and costs for defending this claim.

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.

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. By unanimous decision the Arbitration Panel denied the Claimant's Claim, with no award of damages; and,
2. Each of the parties are to bear their own costs, expenses and attorney's fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed. The NASD shall retain the \$120.00 non-refundable claim filing fee and the \$400.00 hearing session deposit previously deposited with the NASD by Flynn. In addition, Flynn is assessed additional Forum Fees in the amount of \$400.00. Forum Fees were assessed on the basis of \$400.00 per hearing session for two hearing sessions.

Additional Forum Fees assessed by the arbitration panel are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures

Name

Date of signature

/S/ Thomas F. Tobin
Thomas F. Tobin, Esq.
Chairperson, Public Arbitrator

November 19, 1992

/S/ James C. Sell
James C. Sell, CPA
Public Arbitrator

November 18, 1992

/S/ Neal Van Zutphen
Neal Van Zutphen
Industry Arbitrator

November 16, 1992