

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Karla Wright as personal representative for
the estate of Karl Hoshor

Case No. 91-04005

Name of Respondent(s)

Dean Witter Reynolds, Inc.

REPRESENTATION

For Claimant, Karla Wright as personal representative for the estate of Karl Hoshor ("Hoshor"): George Franjola, Esq. of Allen, Dyer, Doppelt, Franjola & Milbrath.

For Respondent, Dean Witter Reynolds, Inc. ("Dean Witter") George Sullivan, Esq. of Dean Witter.

CASE INFORMATION

Statement of Claim filed: December 17, 1991. Claimant's Submission Agreement signed: November 4, 1991.

Respondent's Statement of Answer filed: April 30, 1992.

Respondent, Dean Witter, did not sign a Submission Agreement as required by Sections 12 and 25 of the Code (see "Other Issues").

HEARING INFORMATION

On May 11 and 12, 1993, in Tampa, Florida, hearings lasting four sessions were conducted.

CASE SUMMARY

Claimant alleged that Respondent was liable for: violation of the Florida Investor Protection Act; breach of contract; breach of fiduciary duty; misrepresentation; and, negligence. Claimant alleged that Respondent recommended the purchase of Aircraft Income Partners Limited Partnership, Dean Witter High Income Advantage Trust II and Dean Witter High Income

Advantage Trust III which recommendations were unsuitable in view of Claimant's stated investment objectives, age and retirement status. Claimant subsequently withdrew, without prejudice, the claim regarding Aircraft Income Partners Limited Partnership.

Respondent denied all allegations of wrongdoing and alleged that: Mr. Hoshor was willing to assume stock market type risk; and, Mr. Hoshor failed to take his broker's advice to sell the bond funds when the bond market began to decline.

Respondent alleged the affirmative defenses of: assumption of risk; the transactions were consistent with Claimant's expressed financial goals; failure to timely complain about the transactions; waiver; authorization; ratification; no misrepresentations were made; lack of intent; lack of recklessness; market conditions caused the losses; failure to state a claim; common law tort claims are barred by the Economic Loss Rule; statute of limitations; and punitive damages are not available under New York state law.

RELIEF REQUESTED

Claimant requested damages in excess of \$50,000, plus interest, costs, attorney's fees and such other relief as the Panel deems appropriate, including rescission of the purchase of the limited partnership.

Respondent requested dismissal of the claim, plus costs, and fees.

OTHER ISSUES CONSIDERED & DECIDED

1. This Panel finds that Dean Witter was required to execute a Submission Agreement pursuant to Section 12 of the NASD Code of Arbitration Procedure, Dean Witter being an NASD member firm.
2. 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 arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Dean Witter, is found not liable and, therefore, all claims against it are hereby dismissed.
2. Claimant's request for attorney's fees and costs is denied.
3. Respondent's request for attorney's fees and costs is denied.

OTHER COSTS

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

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$2,000 (four sessions x \$500 per session).

2. Claimant is hereby assessed \$2,000 for which the NASD shall retain the \$800 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$1,200.

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

Concurring Arbitrators' Signatures

/s/
Harold M. May

Public

/s/
John F. Geraci

Public

/s/
Michael N. Gonatos

Industry

Date of Decision: June 3, 1993