

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)	
)	
<u>Name of Claimant(s)</u>)	
)	
Jane Brush)	
)	
)	Case No. 91-04085
)	
<u>Name of Respondent(s)</u>)	
)	
Dean Witter Reynolds, Inc.)	
Augustus G. DeLong, Jr.)	
)	

REPRESENTATION

For Claimant, Jane Brush ("Brush"): Patricia A. Shub, Esq. of Patricia A. Shub, P.A.

For Respondents, Dean Witter Reynolds, Inc. ("DWR") and Augustus G. De Long, Jr. ("De Long"): Carol B. Schachner, Esq. of DWR.

CASE INFORMATION

Statement of Claim filed: December 24, 1991. Claimant's Submission Agreement signed: November 22, 1991.

Respondents' Joint Statement of Answer filed: April 16, 1992. Respondents' Submission Agreements signed: January 12, 1993 by De Long, and on April 15, 1992 by William Peterson on behalf of DWR.

HEARING INFORMATION

On January 7, 1993, in Fort Lauderdale, Florida, a pre-hearing conference lasting one (1) session was conducted via telephone conference call with an arbitrator.

On January 12 and 13, 1993, in Fort Lauderdale, Florida, hearings lasting four (4) sessions were conducted.

CASE SUMMARY

Claimant alleged that she was an elderly retired person, wholly unsophisticated in securities matters, who sought preservation of capital with moderate income and minimum risk; that Respondents, through De Long, made misrepresentations of and omitted to state material facts;

recommended and effected trades in unsuitable securities including an option income fund and limited partnership; and, that Respondents' actions constituted breach of fiduciary duty, fraud, negligent supervision and violation of Sections 517.301 and 211, Florida Statutes.

Respondents denied all allegations of wrongdoing and alleged that Claimant sought high quarterly income; that most of the securities trades in Claimant's account were unsolicited; that she inquired specifically about the option income fund and limited partnership; that Respondents fully explained all risks and Claimant made her own investment decisions after consultation with her son; that Claimant's portfolio was suitable and well balanced; and, that her losses were the result of market action and not within Respondents' control.

Respondents alleged the affirmative defenses of failure to state a claim; no fiduciary duty owed; all duties faithfully carried out; Claimant controlled her own account; no excessive trading; no intent to defraud or reckless disregard; no misrepresentation or omissions; waiver; ratification; estoppel; superseding intervening causes; proper supervision; and, no recovery as a matter of law.

RELIEF REQUESTED

Claimant requested damages of \$48,000.00, attorney's fees and costs.

Respondents requested dismissal and attorney's fees.

OTHER ISSUES CONSIDERED & DECIDED

1. Respondents renewed their Motion to Dismiss at the beginning of the hearing. Ruling was deferred until the conclusion, and the Panel has denied that Motion.
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 original(s) 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. Respondents are found liable, jointly and severally, and shall pay to the Claimant the amount of \$25,000.00, inclusive of interest, upon tender to DWR of the Claimant's units of Aircraft Income Partners, L.P.
2. Claimant's request for attorney's fees and costs is denied.
3. Respondents' request for attorney's fees is 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 \$1,900.00 (one pre-hearing conference x \$300.00 plus four sessions x \$400.00).
2. Claimant is hereby assessed \$950.00 for which the NASD shall retain the \$400.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$550.00 payable to the National Association of Securities Dealers, Inc.
3. Respondents are hereby assessed \$950.00, jointly and severally, payable to the National Association of Securities Dealers, Inc.
4. The NASD shall retain the non-refundable filing fee of \$120.00 paid by the Claimant.

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

Concurring Arbitrators' Signatures

/s/
Myron Dunay, Esq.

Public

/s/
Sidney I. Josepher

Industry

/s/
Gary M. Landau, Esq.

Public

Date of Decision: FEBRUARY 11, 1993