

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)	
)	
<u>Name of Claimant(s)</u>)	
)	
The Estate of Nathan B. Jacobs)	
)	Case No. 92-00081
)	
<u>Name of Respondent(s)</u>)	
)	
Dean Witter Reynolds, Inc.)	
James B. Davis)	
)	

REPRESENTATION

For Claimant, The Estate of Nathan B. Jacobs ("Jacobs"): William Scott, Esq. of Brooks, Pierce, McLendon, Humphrey & Leonard.

For Respondents, Dean Witter Reynolds, Inc. ("Dean Witter"): and James Davis ("Davis"): James McLoughlin, Esq. of Moore & Van Allen.

CASE INFORMATION

Statement of Claim filed: January 9, 1992 and Amended October 16, 1992. Claimant's Submission Agreement signed: December 10, 1991.

Respondents' Statement of Answer filed: March 31, 1992. Respondents' Submission Agreements signed: March 4, 1992 by Davis, and on March 30, 1992 by Lorena Kern on behalf of Dean Witter.

HEARING INFORMATION

On October 15 and 16, and November 2 and 3, 1992, in Charlotte, North Carolina hearings lasting ten (10) sessions were conducted.

CASE SUMMARY

Claimant alleged that Respondents were liable for: breach of contract; negligence; common law fraud; and, violations of federal and state securities laws. Claimant alleged that: Respondents induced Jacobs into purchasing unsuitable limited partnerships, stocks and options; engaged in excessive trading; executed unauthorized trades; failed to establish and implement appropriate supervisory procedures; failed to adequately investigate the investments recommended for the account; and, misrepresented the potential return and the nature of the options trading questionnaires.

Respondents denied all allegations of wrongdoing and alleged that: Jacobs was a sophisticated investor; Claimant was advised of the risks involved; all transactions were authorized; Claimant failed to timely complain; Claimant

made all investment decisions; and, the losses were due to unforeseeable market conditions.

Respondents alleged the affirmative defenses of: waiver; ratification; estoppel; laches; statute of limitations and arbitrators are not empowered to award punitive damages under New York Law.

RELIEF REQUESTED

Claimant requested damages of approximately \$135,800.00, plus attorney's fees, interest and punitive damages.

Respondents requested dismissal of the claim, plus costs and attorney's fees.

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 and post hearing submissions, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Dean Witter, is found liable and, shall pay to Claimant the amount of \$19,000.00.
2. Respondent, Davis, is found liable and shall pay to the Claimant the amount of \$1,000.00.
3. Claimant's request for attorney's fees, interest and punitive damages is denied.
4. Respondents' request for attorney's fees and costs is denied.

OTHER COSTS

1. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$7,500.00 (ten sessions x \$750.00 per session)

2. Claimant is hereby assessed \$3,750.00 for which the NASD shall retain the \$750.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$3,000.00.

3. Respondent, Dean Witter, is hereby assessed \$3,750.00 payable to the National Association of Securities Dealers, Inc.

4. The NASD shall retain the non-refundable filing fee of \$200.00 paid by the Claimant.

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

Concurring Arbitrators' Signatures

/s/
John F. Snyder, Esq.

Public

/s/
Jack C. Aycock

Industry

/s/
F. H. Ross, Jr.

Public

Date of Decision: December 14, 1992