

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Tom and Gene Dirnberger

No. 92-00139

Name of Respondents

Dean Witter Reynolds, Inc.,
Gregg Happe, and Sandra West

REPRESENTATION OF PARTIES

For Claimants: Gary L. Phleger, Esq. of Johnson & Wood, P.A.
Wayzata, Minnesota.

For Respondents: Wendy R. Robinson, Esq. of Dean Witter
Reynolds, Inc., San Francisco, California.

CASE INFORMATION

Statement of Claim filed: January 14, 1992.
Reply to Counterclaim filed on or about: April 16, 1992.

Claimant's Submission Agreement signed on: January 8, 1992.

Joint Statement of Answer and Counterclaim filed by Respondents,
Dean Witter Reynolds, Inc. and Sandra West on: March 13, 1992.
Statement of Answer and counterclaim filed by Respondent Gregg
Happe on: June 19, 1992.

Respondent, Dean Witter Reynolds, Inc.'s Submission Agreement
signed on: March 11, 1992.

HEARING INFORMATION

Hearing dates/sessions: August 25, 1992 for two (2) sessions,
August 26, 1992 for two (2) sessions.

Hearing Location: Minneapolis, Minnesota.

CASE SUMMARY

Claimants Tom and Gene Dirnberger ("the Dirnbergers") alleged that Respondents Dean Witter Reynolds, Inc. ("Dean Witter"), Sandra West ("West"), and Gregg Happe ("Happe") recommended inappropriate investments, failed to provide prospecti, failed to provide monthly statements, negligently sent statements to Collierville, Tennessee, executed option trades without having an option account agreement with the Dirnbergers in June of 1987, and negligently incurred a loss on the sale of the Aldus Corporation stock plus commissions incurred on said transaction, without authority from the account holder or designated representative. The Dirnbergers alleged that Happe failed to provide a prospectus for the 3500 shares of High Income Advantage Trust which Happe recommended, and was an unsuitable investment.

Respondents, Dean Witter and West alleged that the Dirnbergers completely understood the risks of loss they were accepting with their investment decision prior to their specific orders for each transaction in the mutual funds, as well as the Aldus Stock. Respondents also alleged that the claim is time-barred. West alleged that she inherited the Dirnberger's account after Happe left, and the Dirnbergers indicated that they preferred the return that was being paid by the High Income Fund, and completely understood the additional risks. In their counterclaim, Respondents asked for indemnity and contribution from the Dirnbergers.

Respondent Happe denied that he committed any error in connection with the Dirnberger's unsolicited purchase or sale of Aldus Stock. Happe alleged that he does not recall recommending the High Income Fund to the Dirnbergers. Happe further alleged that the claim is time barred.

In their reply to the counterclaim, the Dirnbergers alleged that they believed they had placed their money in a safe fund. The Dirnbergers further alleged that they relied entirely on the

broker to select an appropriate investment.

RELIEF REQUESTED

Claimants requested that they transfer back to Dean Witter all of their shares of the High Income Advantage Trust and High Income Advantage Trust II in exchange for its initial issue price of \$10.00 a share, in addition, claimants ask to be compensated for the commissions of \$1018.00 plus the loss on the sale of the Aldus stock of \$250.00 plus a reasonable assessment of punitive or exemplary damages relating to The Aldus transaction and the trading of options without an agreement therefor.

Respondents requested that if they are found liable, the Dirnbergers, as trustees, are liable to Respondents for any losses they may be required to pay. Respondent Happe requested that the Statement of Claim be dismissed.

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.

Respondents Sandra West and Gregg Happe did not file with the NASD a properly executed submission agreement pursuant to Section 12 of the NASD Code of Arbitration Procedure, and having answered, appeared, and testified, are bound by the conclusion of the panel on all issues submitted for determination.

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. The Statement of Claim is denied and dismissed in its entirety;
2. Each of the parties shall bear their own costs and expenses incurred herein, including attorney's fees, other than those specifically enumerated for herein.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

4 hearing sessions X \$400.00 = \$1600.00
minus hearing session deposit of \$400 = net \$1200 due.

Forum fees Assessed Against: the Respondents Dean Witter, Gregg Happe, and Sandra West, jointly and severally, in the amount of \$800. Forum Fees also assessed against: the Claimants Tom and Gene Dirnberger, jointly and severally, in the amount of \$400.

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

By The Arbitration Panel:

Dated:

<u>October 15, 1992</u>	/s/	<u>D. Randall Blohm, Esq.</u> D. Randall Blohm, Esq. Chairperson Public Arbitrator
<u>October 13, 1992</u>	/s/	<u>Angela R. Banga, Esq.</u> Angela R. Banga, Esq. Public Arbitrator
<u>October 10, 1992</u>	/s/	<u>Robert E. Robertson</u> Robert E. Robertson Industry Arbitrator

Date Award Served By The NASD: October 27, 1992