

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

James F. Burge and James F. Burge
as Beneficiary of the Center Glass Company
Defined Benefit Pension Trust and Money
Purchase Pension Plan

NASD Arbitration
No. 92-00177

Name of Respondent(s)

Dean Witter Reynolds Inc.
Clark A. Bruce
Roland Bruce

REPRESENTATION

For Claimant: Philip M. Aidikoff, Esq. and Robert A. Uhl, Esq.,
Aidikoff & Kesluk, Los Angeles, California

For Respondents: Timm A. VerDuin, Esq., Dean Witter Reynolds Inc.,
San Francisco, California

CASE INFORMATION

Statement of Claim filed: January 9, 1992

Claimant's Submission Agreements signed as follows:
James F. Burge, Individually: January 13, 1992
James F. Burge, Trustee: January 31, 1992

Joint Statement of Answer filed by Respondents: April 15, 1992

Respondents' Submission Agreements signed as follows:
Dean Witter Reynolds Inc.: April 15, 1992
Clark A. Bruce: April 20, 1992

Respondent Roland Bruce did not file a Submission Agreement.
However, he appeared at the hearing and is subject to National
Association of Securities Dealers, Inc. (NASD) jurisdiction in
accordance with Section 12 of the NASD Code of Arbitration
Procedure.

HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s): None

Hearing Date(s)/Session(s): May 3, 1994 (two sessions)
May 4, 1994 (two sessions)

Hearing Location: Los Angeles, California

CASE SUMMARY

Regarding investments in limited partnerships, Claimant alleged that he sustained losses as a result of negligence, unsuitable securities transactions, misrepresentation, breach of fiduciary duty, fraud, failure to diversify and lack of supervision of the registered representatives who were primarily responsible for Claimant's accounts. Claimant further alleged that the investments made by Claimant were untested, highly risky, speculative, exposed Claimant to imprudent risks and were inconsistent with Claimant's stated investment objective of safety of principle.

Respondents denied any liability to Claimant and alleged that Claimant's investments were perfectly suitable for Claimant's pension trusts. Respondents further alleged that Claimant actively participated in the selection of the limited partnership investments, waited several years before bringing this arbitration and never expressed any complaint to Dean Witter Reynolds Inc. that positions in the pension accounts were inconsistent with Claimant's investment objectives or financial situation. Respondents further alleged that Claimant is a successful businessman whose net worth, upon information and belief, is in excess of \$4 million, and that Claimant has demonstrated the capability and business acumen to understand the risks associated with his various investments, including the limited partnership investments. Respondents further alleged that the risks associated with Claimant's investments were discussed in the prospectuses that were provided to Claimant. Respondents also asserted affirmative defenses.

RELIEF REQUESTED

Claimant requested:

1. Compensatory damages in an amount to be proven at the time of arbitration. Said damages are believed by Claimant to be approximately \$300,000.00;
2. Interest on said damages at the statutory rate from the date of loss to the present;
3. Punitive damages and exemplary damages in a sum determined by the panel;
4. Claimant's costs of suit and attorney's fees;

5. Loss of use of invested capital to be proven at the hearing; and

6. Such other and further relief as the panel may deem just and proper.

Respondents requested dismissal of Claimant's Statement of Claim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in either 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, the evidence presented at the hearing and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. In satisfaction of Claimant's claims, Dean Witter Reynolds Inc. is solely liable for and shall purchase Dean Witter Realty Income Partnership III, L.P. from Claimant for a purchase price of \$52,000.00.

2. All claims asserted against Respondents Clark A. Bruce and Roland Bruce are dismissed.

3. All other claims by Claimant, including the claims for punitive and exemplary damages are dismissed.

4. The parties shall each bear their respective costs including attorney's fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall refund the \$750.00 hearing session deposit previously paid by Claimant. Forum fees are assessed against: Dean Witter Reynolds Inc. solely, in the amount of \$3,000.00, calculated as follows: Four hearing sessions times \$750.00/session.

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

ARBITRATORS

Name _____ Public / Industry

John E. Ohashi, Esq.

Public Arbitrator

Trude C. Taylor

Public Arbitrator

Michael W. Burnett, PhD

Industry Arbitrator

Concurring Arbitrators' Signatures

John E. Ohashi, Esq.

Trude C. Taylor
Trude C. Taylor

Michael W. Burnett, PhD

Date of Decision: 5/4/94

Date Served: 06/21/94