

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Milton Padowitz

92-00244

Name of Respondent

Dean Witter Reynolds, Inc.

REPRESENTATION

For Claimant, Milton Padowitz ("Padowitz"): Robert E. Weisberg, Esq.

For Respondent, Dean Witter Reynolds, Inc. ("DWR"): Bradford D. Kaufman, Esq. of Steel Hector & Davis.

CASE INFORMATION

Statement of Claim filed: 1/22/92.

Claimant's Submission Agreement signed on: 1/8/92.

Statement of Answer filed by Respondent, DWR, on: 4/3/92.

Respondent, DWR's Submission Agreement signed on: 3/24/92 by Lorena J. Kern as First Vice President of DWR.

HEARING INFORMATION

On February 25, 1994 in Fort Lauderdale, Fl. a Pre-Hearing Conference lasting one session was conducted via telephone conference call with a single arbitrator.:

On March 2, 3, and 4, 1994 in Fort Lauderdale, Fl., hearings lasting six (6) sessions were conducted.

CASE SUMMARY

Claimant, Padowitz, alleged that, he was employed as Vice President, Regional Insurance Coordinator of Respondent, DWR until July 1, 1990 at which time he was terminated; Claimant was terminated as a result of a company wide reorganization; during said reorganization, younger less experienced employees were retained to perform Claimant's job; Claimant's termination was a function and product of Respondent, DWR's personnel practice; and, Claimant's termination was in violation of the Age Discrimination in Employment act, 29 U.S.C. §621 et. seq.

Respondent, DWR, alleged that Claimant has failed to prove by preponderance of the evidence that age was a determining factor in the decision by Respondent to terminate him; Claimant's termination was a result of a staffing reduction due to economic conditions; the employee retained had superior skills and was a better candidate for retention; and, that age played absolutely no part in Respondent's decision. Respondent set forth the affirmative defenses of, waiver; estoppel; failure to mitigate damages; and failure to state a cause of action.

RELIEF REQUESTED

Claimant, Padowitz, requested: lost wages in the amount of \$294,000; unspecified amounts for lost employee benefits; reinstatement in his prior position or, in the alternative, front pay in the amount of \$360,000; punitive damages of double any monetary relief; plus, prejudgment interest and attorney fees.

Respondent, DWR, requested: dismissal of all claims and reimbursement for attorneys fees and costs.

OTHER ISSUES CONSIDERED & DECIDED

1. At the hearing, Respondent made a motion for a Directed Verdict which was denied by the panel.
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 undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, DWR is found not liable and, therefore, all claims against it are hereby dismissed.
2. Respondent, DWR's, request for attorneys fees and costs is hereby denied.
3. Claimant, Padowitz's, request for punitive damages, attorneys fees and costs is hereby denied.

OTHER COSTS

Other than forum fees, set forth below, each party shall bear its own costs with regard to this matter.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$6,300. (one (1) pre hearing conference x \$300, plus six (6) hearing sessions x \$1,000)

1. Claimant, Padowitz, is hereby assessed \$6,150 which shall be paid to the NASD.
2. Respondent, DWR, is hereby assessed \$150 which shall be paid directly to the NASD.
3. The NASD shall retain the non refundable filing fee of \$500.00 paid by the Claimant.

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

ARBITRATION PANEL

Concurring Arbitrators' Signatures

Name	Public/Industry
/s/ _____ Stan West, Chairman	Public
/s/ _____ David Unterberg, Esq., Panelist	Public
/s/ _____ Robert C. Sauer, Panelist	Industry

Date of Decision: March 15, 1994