

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Anne W. Ferguson

Case No. 92-00313

Name of Respondents

Dean Witter Reynolds, Inc.
Eugenia G. Lavery

REPRESENTATION

For Claimant, Anne W. Ferguson ("Ferguson"): Albert B. Lewis, Esq. of Piper, Esteva, Karvonen & Lewis.

For Respondents, Dean Witter Reynolds, Inc. ("DWR") and Eugenia Lavery ("Lavery"): Melinda Socal Herbst, Esq. of DWR.

CASE INFORMATION

Statement of Claim filed: January 28, 1992. Claimant's Submission Agreement signed: January 28, 1992.

Respondents' joint Statement of Answer filed: March 19, 1992. Respondent, Eugenia G. Lavery's, Submission Agreement signed: February 20, 1992. Respondent, DWR's Submission Agreement and Corporate Acknowledgment signed by Lorena J. Kern on March 13, 1992.

HEARING INFORMATION

On October 30, 1992, a pre-hearing conference lasting one session was conducted via telephone conference call with an arbitrator.

On November 18, 1992; November 19, 1992 and April 2, 1993 in Tampa, Florida, hearings lasting eight sessions were conducted.

CASE SUMMARY

Claimant alleged that despite her stated investment objectives of safety and security Respondents made unauthorized purchases of investments, such as Dean Witter Realty Partnership IV and Sears Tax Exempt Unit Trusts for her account and that at the time the purchases were made she was not in need of tax exempt income nor was the nature of the investments explained to her. Claimant stated that those investments were unsuitable for her and that they were made for the purpose of generating commissions for Respondents and caused her substantial financial losses. Claimant contended that Respondents' actions constituted a breach of fiduciary duty or in the alternative Respondents were negligent and in violation of Securities Laws of the State of Florida.

Respondents denied all allegations of wrongdoing contained in the Statement of Claim and maintained that Claimant's investment objectives were income and growth and that the investments purchased for Claimant were suitable and that all transactions were approved and authorized by Claimant. Respondents further maintained that Lavery fully explained the illiquid nature of the investments and that Claimant understood the investments. Respondents contended that market conditions and events not caused by, or in the control of Respondents caused any alleged losses or fluctuations in value in Claimant's account.

RELIEF REQUESTED

Claimant requested an award of damages of \$32,000.00 plus interest costs and attorneys' fees as well as all commissions paid in conjunction with the transactions complained of.

Respondent requested dismissal of the Claim and that costs be assessed against Claimant.

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

1. Respondent, Lavery, is found not liable and, therefore, all claims against her are hereby dismissed.
2. The Panel orders that the sale of the thirty five units of Dean Witter Real Estate Income Partnership IV be rescinded and that the \$17,500.00 paid for said units by Anne W. Ferguson be transferred to Dean Witter Reynolds, Inc. and \$17,500.00 be paid to Anne W. Ferguson.

3. Additionally, Respondent, DWR, is ordered to Pay Claimant, Ferguson, the sum of \$7,000.00 which represents interest at 8% on \$17,500.00 for five years.
4. Respondent, DWR, is ordered to reimburse the Claimant, Ferguson, the commission paid by her in the amount of \$2,003.00 for the purchase of the Sears Tax Exempt Unit trust L2 Series 76MPS.
5. Respondent, DWR, shall pay to Claimant, Ferguson, costs, in the amount of \$2,000.00.
6. Respondent, DWR, shall pay to Claimant, Ferguson, attorneys' fees of \$7,500.00 representing the reasonable amount of time of 50 hours at the reasonable hourly rate of \$150.00 per hour pursuant to Florida Statute.
7. All other Claims are hereby denied.

OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$3,500.00 (One-(1)-pre-hearing conference X \$300.00 plus eight-(8)-hearing sessions X \$400.00).

1. Respondent, DWR, is hereby assessed \$3,500.00, \$400.00 of which shall be paid directly to the Claimant and \$3,100.00 of which shall be paid to the National Association of Securities Dealers, Inc.
2. 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/

Paul Sidney Elliott, Esq.

Public

/s/

Andrew Fellios

Industry

/s/

Jordan Lederer

Public

Date of Decision: 5/26/93