

N.A.S.D. AWARD

PUBLIC

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Ron Zimmerman

92-00530

Name of Respondent(s)

Dean Witter Reynolds Inc.  
Nickolas J. Sigalos  
Derek M. Denhard

REPRESENTATION

For Claimant Ron Zimmerman: Alexander J. Repasky, Esq.

For Respondents Dean Witter Reynolds Inc. and Nickolas J. Sigalos: Paul Stivers, Esq. of the law firm of Rogers & Hardin.

For Respondent Derek M. Denhard: Sara Ford, Esq. of the law firm of Sutherland, Asbill & Brennan.

CASE INFORMATION

Statement of Claim filed: April 15, 1992.

Claimant's Submission Agreement signed on: March 16, 1992.

Joint Statement of Answer filed by Respondents Dean Witter Reynolds Inc. and Nickolas J. Sigalos on: June 12, 1992.

Statement of Answer filed by Respondent Derek Denhard on: June 11, 1992.

Amended Statement of Answer filed by Respondent Derek Denhard on: December 1, 1992.

Respondents, Dean Witter Reynolds Inc. and Nickolas J. Sigalos's, Submission Agreements signed on: October 4, 1993.

Respondent, Derek Denhard's, Submission Agreement signed on: October 4, 1993.

### HEARING INFORMATION

Hearing Dates/Sessions:           October 4, 1993 / Two Sessions  
  October 5, 1993 / Two Sessions  
  October 6, 1993 / Two Sessions

Hearing Location:               NASD offices located at One Securities Center, 3490 Piedmont  
  Road, NE, Atlanta, Georgia, 30305.

### CASE SUMMARY

Claimant, alleged that Respondents, wilfully and recklessly, breached their fiduciary duty. The allegation was based on the fact that Claimant earned an hourly wage, had limited education and limited investment experience, thereby making him an unsuitable and unsophisticated investor. Despite this, Respondents accepted Claimant as a client. Claimant maintained that he never received offering memorandums, prospectuses, risk factors, due diligence information or any other such information pertaining to any transaction entered into. Furthermore, Claimant maintains that he relied upon the expertise and experience of Respondents and that Claimant's funds were placed in unsuitable investments.

Claimant further maintained that Respondents wilfully and continuously churned his account, to his detriment, by engaging in more than two hundred ninety (290) trades within sixteen (16) months, thereby generating commissions in excess of \$37,500.00 for themselves, and losses of approximately \$193,496.00 to the Claimant.

Further, Claimant alleged he was subjected to numerous instances of gross improprieties, negligence and recklessness by Respondents, upon whom he relied for investment counseling, advice and expertise.

Respondents, Dean Witter Reynolds Inc. ("Dean Witter") and Nickolas J. Sigalos ("Sigalos"), maintained that through conversations with Sigalos, written confirmations of transactions and monthly statements, Claimant was aware of the damage done by his trading in Seagate options; that Claimant is responsible for the result of his acts because he misrepresented his credentials and misstated his objective; that Respondents are not liable, nor did they violate any applicable standard of conduct; that the trading in Claimant's account was consistent with his stated objectives, specifically, to speculate and trade frequently to make short term profits; that Claimant misrepresented his investment sophistication by stating he subscribed to Investors Daily and that he observed the securities markets closely; that the account was not "controlled" by Respondent, Sigalos, in that many of the ideas were not solicited from him; that Sigalos was not negligent, nor did he make any misrepresentations; and, that the decision to purchase Cascade International was Claimant's, and was requested in the belief that the stock price would quickly rise and produce large, short-term profit.

Respondents, Dean Witter and Sigalos, further maintained that the claim is precluded by the doctrine of laches or applicable statutes of limitation; that the claim is precluded by doctrine of estoppel; that the losses were caused by market movement and economic fluctuations beyond the control of Dean Witter or Sigalos, and not attributable to them; that Claimant is precluded from requesting punitive damages because the Customer's Agreement and Margin Account, signed by Claimant, indicates that this dispute was to be determined according to laws of State of New York, and that the rule in New York is that arbitrators may not award punitive damages.

Respondent, Derek Denhard ("Denhard"), maintained that Claimant indicated his income was approximately \$75,000.00 a year, his liquid assets amounted to approximately \$150,000.00, and his net worth was about \$500,000.00. Respondent Denhard further maintained the Claimant was conversant on the subject of options, had traded in them in the past, understood the risks, rewards and speculative nature of option trading and given Claimant's objectives option trading was suitable. Respondent Denhard further maintained every trade made by Claimant through Denhard was unsolicited, and all decisions were made by Claimant. Denhard further maintained that Claimant's account with Denhard was profitable, and Denhard cannot be held liable for losses incurred while the account was traded with Sigalos.

Denhard further maintained that he is not liable because the claim is precluded by the defenses of waiver, estoppel, ratification, assumption of risk and Claimant's own negligence.

#### **RELIEF REQUESTED**

Claimant requested: Damages of \$227,969.56, treble damages (punitive) of \$683,908.68, plus attorney fees and the costs of this proceeding.

Respondents, Dean Witter Reynolds Inc. and Nickolas J. Sigalos, requested: An award dismissing the claim against them, and that costs be assessed against Claimant.

Respondent, Derek Denhard, requested: An award denying the claim against him, plus attorney fees.

#### **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. All claims against Respondents, Dean Witter Reynolds Inc., Nickolas J. Sigalos and Derek M. Denhard, be and hereby are dismissed in all respects.
2. The Claimant's claim for treble damages is denied.

3. Each party shall bear their respective costs including attorneys fees.

**FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

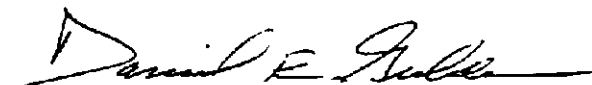
6 sessions X \$1,000.00 = \$6,000.00 minus hearing session deposit of \$1,000.00 = net \$5,000.00 due.

Forum fees Assessed Against:

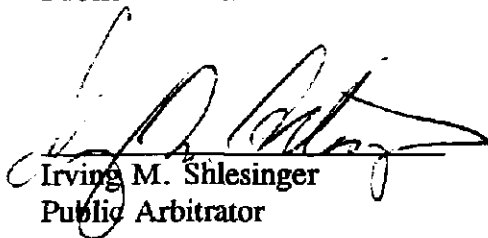
The Claimant be and hereby is liable and shall pay to the NASD the balance due of \$5,000.00 to represent forum fees.

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

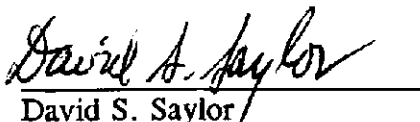
**ARBITRATORS' SIGNATURES**



Daniel E. Gulden, Esq.  
Public Arbitrator



Irving M. Shlesinger  
Public Arbitrator



David S. Saylor  
Industry Arbitrator

Date of Decision: December 7, 1993