

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Name of Claimant

Dennis R. Casey

No. 92-00622

Name of Respondents

Dean Witter Reynolds, Inc.
James Mooney, Phillip Sloan
and Vickey Berent, n/k/a
Vickey Martin

REPRESENTATION OF PARTIES

For Claimant: John C. Fudasco, Esq., Arlington, Virginia.

For Respondents: Mark R. Werder, Esq., of Honigman, Miller,
Schwartz and Cohn, Detroit, Michigan.

CASE INFORMATION

Statement of Claim filed on or about: February 18, 1992.

Claimant's Submission Agreement signed: March 2, 1992.

Respondents' Joint Statement of Answer filed on or about: June 19,
1992.

Respondent Phillip Sloan's Submission Agreement signed on: June 9,
1992.

Respondent James Mooney's Submission Agreement signed on: June 9,
1992.

Respondent Vickey Berent's Submission Agreement signed on: June 9,
1992.

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

Amended to the Statement of Claim filed on or about: June 22,
1992.

RELIEF REQUESTED

Claimant requested the following:

1. \$100,000.00 plus economic loss for the period of April 22, 1991 to date of the arbitrators' Award which will be calculated at the hearing;
2. Refund of all margin calls and/or interest, or any other loss as a result of Respondents' failure to execute the requested trade;
3. Interest from April 22, 1991, to date at 10% on the lost revenue;
4. Punitive damages in the amount of \$100,000.00;
5. Reimbursement for all costs of this proceeding including the costs of expert witnesses;
6. Attorney's fees;
7. Legal interest on the total until paid; and
8. For all other relief in law or equity to which he may be entitled under the Federal Arbitration Act, the Rules of the New York Stock Exchange, the Rules of the National Association of Securities Dealers, the Illinois Securities Act, at common law under the laws of the State of Illinois (Claimant's residence), or under principles of equity.

Respondents requested that the claims against them be denied.

OTHER ISSUES CONSIDERED & DECIDED

On October 14, 1992, the former chairman of the panel failed to appear at the hearing even after he had been contacted on October 12, 1993 concerning the hearing. All other times he had been unreachable. Due to his failure to appear, and the failed attempts to contact him on the morning of the 14th, the NASD proposed to the parties the options of proceeding with the two remaining arbitrators, or have a new chairman appointed. Respondents were willing to proceed with the two remaining arbitrators. Claimant refused both alternatives and requested that everyone wait until 11:00 a.m. so that the NASD could continue to search for the chairman.

The NASD's attempts to contact the chairman were to no avail, and

2. Claimant, Dennis R. Casey's claims for interest and punitive damages are denied and dismissed with prejudice.

3. Respondents, Dean Witter Reynolds, Inc. and James Mooney are liable for, and shall pay to the Claimant, Dennis R. Casey the sum of \$5,000.00 as satisfaction of all of his claims herein.

4. Respondent, Dean Witter Reynolds, Inc. is liable for, and shall pay to Claimant, Dennis R. Casey the sum of \$950.00 as reimbursement of his arbitration filing fee and hearing session deposit.

OTHER COSTS

Each party shall bear its own costs and expenses associated with this arbitration, including attorneys' fees, except as set forth more fully below.

Respondent, Dean Witter Reynolds, Inc. shall pay for all forum fees and expenses of this arbitration.

Respondents, Dean Witter Reynolds, Inc. and James Mooney are liable for, and shall pay to the Claimant, Dennis R. Casey the sum of \$12,500.00 for his claim for attorneys' fees. The authority for the award of attorneys' fees can be found in the Illinois Securities Law, Chapter 121 1/2.

FORUM FEES

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

1 pre-hearing conference session x \$300.00 = \$300.00

4 hearing sessions x \$750.00 = \$3,000.00

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$200.00, and shall retain the hearing session deposit in the amount of \$750.00 previously paid to the NASD by the Claimant.

HEARING INFORMATION

Pre-Hearing conference date: October 8, 1992. One (1) session.

Hearing dates and Locations: October 14, 1993. One (1) session.
Chicago, Illinois.
June 21, 1993. Two (2) sessions.
Southfield, Michigan.
June 22, 1993. One (1) session.
Southfield, Michigan.

CASE SUMMARY

Claimant, Dennis R. Casey ("Claimant") alleged: Breach of fiduciary duty; negligence in violation of Section 1 of the NASD Rules of Fair Practice (the "NASD Rules") and Rule 405 of the NYSE Rules; failure to follow Customer's instructions to close out his position in violation of Section 1 of the NASD Rules; failure to execute customer order to purchase sufficient shares to cover his short position at the breakeven price or lower, and an unauthorized change of the order from 5,000 shares to 1,000 shares violated Section 1, Article III of the NASD Rules; failure to disclose the true state of market in that there had been no information given concerning the bid/ask or other relevant information concerning the market in violation of Section 1, Article III of the NASD Rules; and gross negligence in supervision in that Respondents failed to supervise or review the actions of Respondent Vicky Berent, an unlicensed sales assistant concerning the aborted trade with the Claimant in violation of Sections 1, 2, 15, and 27 of the NASD Rules, and Rule 405 of the NYSE Rules by Respondents Dean Witter Reynolds, Inc., James Mooney, Phillip Sloan, and Vicky Berent ("Respondents"). The allegations arose out of activities surrounding LDDSA Communication stock in Claimant's account.

In their Answer, Respondents denied the allegations contained in the Statement of Claim. In addition, Respondents asserted that Claimant is a sophisticated investor with a market niche in which he is an expert. Respondents also asserted that they had been unable to execute the trade Claimant had ordered at the \$25 1/4 limit because the "ask" price of the LDDSA sellers that date never matched that limit, the transaction did not close on the over the counter market, resulting in a "nothing done" on Claimant's order. Respondents further asserted that: Respondent Vicky Berent had been supervised properly; Claimant had been told the true status of the market; Casey caused his own loss by failing to purchase 5,000 shares of LDDSA on April 22, 1991 when it had traded at \$26; and Claimant failed to mitigate his damages.

the parties were again presented with the two options mentioned above. The parties agreed to let the NASD find a replacement chairman, and present that person for their review. The name and background information was then provided to the parties. The proposed replacement was rejected by the Claimant. At that point, upon Claimant's request, the hearing was adjourned by the two remaining arbitrators. Respondents then made an oral Situs Motion to have the case transferred to Detroit. Respondents were informed that the Motion should be made in writing.

On October 20, 1992, Respondents filed a written Motion to change the Situs of the hearing to Detroit. Claimant filed his Response to the motion on October 27, 1992. On or about October 28, 1992, a replacement chairman was named to the panel, and the Situs Motion and the response were sent to the panel. On November 5, 1993, Claimant filed a peremptory challenge with the NASD. The challenge was granted. On December 30, 1992, the decision of the majority of the panel granting Respondents' motion was forwarded to the parties.

On January 7, 1993, Claimant filed his request for reconsideration of the decision on Respondents' October Situs Motion. Respondents filed their Response to Claimant's Request on January 19, 1993. Shortly after the receipt of the request for reconsideration, a replacement chairman was appointed to the panel. The original Motion and response, along with Claimant's Request for Reconsideration and Respondents' Response were forwarded to the full panel on or about January 20, 1993. On February 8, 1993, the parties were notified that the arbitrators had granted Respondents' request to transfer the hearing to Detroit.

The parties have agreed that the Award in this matter may be executed by 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. Claimant, Dennis R. Casey's claims against Respondents Vicky Berant, n/k/a Vicky Martin and Philip Sloan are denied and dismissed with prejudice.

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Additional forum fees in the amount of \$3,300.00 are assessed against Dean Witter Reynolds, Inc.

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

CONCURRING ARBITRATORS

Dated:

Name:

August 25, 1993

/s/Marc E. Thomas
Marc E. Thomas
Presiding Chair
Public Arbitrator

August 12, 1993

/s/Mary Ann Golin
Mary Ann Golin
Industry Arbitrator

August 13, 1993

/s/Irving Lopatin
Irving Lopatin
Public Arbitrator

Date of Service by the NASD: _____