

## **N.A.S.D. AWARD**

### **NATIONAL ASSOCIATION OF SECURITIES DEALERS**

In the Matter of the Arbitration Between

#### **Name of Claimants**

Norman M. Boget  
Winifred S. Boget

NASD Arbitration  
No. 92-00707

#### **Name of Respondent**

Dean Witter Reynolds, Inc.  
David Walters

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### **REPRESENTATION**

For Claimant: Peter Stubbs, Esq. - Friedman, Collard & Poswall -  
Sacramento, California.

For Respondent: Kenneth C. Mennemeier, Esq. - Orrick, Herrington & Sutcliffe  
- Sacramento, California.

### **CASE INFORMATION**

Statement of Claim filed: February 27, 1992

Claimant's Submission Agreement signed: February 21, 1992

Joint Statement of Answer filed by Respondent: July 29, 1992

Respondent, Dean Witter Reynolds, Inc.'s Submission Agreement signed: May 22,  
1992

Respondent, David Walter's Submission Agreement signed: May 26, 1992

## **HEARING INFORMATION**

Pre-Hearing Conference: None

Hearing Dates/Sessions:     December 1, 1992 - Two Sessions  
                                     December 2, 1992 - Two Sessions  
                                     January 16, 1993 - Two Sessions  
                                     January 17, 1993 - Three Sessions

Hearing Location: San Francisco, California

## **CASE SUMMARY**

Claimants, Norman M. Boget and Winifred S. Boget (The Bogets), alleged that, Respondent, David Walters (Walters), while employed by Respondent, Dean Witter Reynolds, Inc.(DWR), recommended investment to The Bogets that were unsuitable in light of Claimants' ages and stated investment goals. Claimants also alleged damages for emotional distress due to false representation made to them by the Respondents.

Respondents, Walters and DWR, alleged that the Bogets' portfolio was designed to meet their needs and that the fact that it has not met their expectations is a function of products having not yet matured; the Claimants' impatience with market changes and the realization of some of the risks inherent in some of their investments. The mere fact that the Bogets are now disappointed does not render the investments "unsuitable".

## **RELIEF REQUESTED**

Claimants seek to recover the net loss on their investments of \$5,964.02, damages for inappropriate investments in the estimated amount of \$500,000.00, damages for emotional distress of \$500,000.00, punitive damages in the sum of \$1,000,000.00, costs, fees and attorneys' fees.

Dismissal of the claim in its entirety.

### **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 original 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, Dean Witter Reynolds, Inc., is solely liable and shall pay to Claimants, Norman M. and Winifred S. Boget, the sum of Seven Thousand Dollars and No Cents (\$7,000.00)
2. Each and every Claim of Claimants, Norman M. and Winifred S. Boget, against Respondent, David Walters, is dismissed.
3. Claimants' claim for punitive damages is denied.
4. The parties shall each bear their respective costs and fees.
5. The NASD shall retain the fees deposited by the Claimant.

### **FORUM FEES**

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

Dean Witter Reynolds, Inc. is solely assessed and shall pay to the NASD the sum of \$9,000.00, representing assessments for nine hearing sessions at \$1,000.00 each.

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

## ARBITRATORS

<u>Name</u>	<u>Public/Industry</u>
Marshall S. Galinsky, Esq.	Public Chairperson
Walter Tick, CPA	Public Panelist
Lawrence Kummer	Industry Panelist

### Concurring Arbitrators' Signatures

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Date of Decision: 2-13-93

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Served 2/18/93