

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Mary A. Reardon

No. 92-00771

Name of Respondents

Dean Witter Reynolds, Inc.  
Thomas J. Swik

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REPRESENTATION OF PARTIES

For Claimant: Paul F. Schofield, Esq. of Siebel, Whipple & Schofield, Chicago, Il.

For Respondents: Curt H. Mueller, Esq. Vice President & Senior Attorney, Dean Witter Reynolds, Inc., San Francisco, California.

CASE INFORMATION

Statement of Claim filed: March 3, 1992

Claimant's Submission Agreement signed on: February 19, 1992

Statement of Answer filed by Respondents, Dean Witter Reynolds, Inc. & Thomas J. Swik on: April 23, 1992.

Respondent Dean Witter Reynolds, Inc.'s Submission Agreement signed on: April 21, 1992.

Respondent Thomas J. Swik's Submission Agreement signed on: May 1, 1992

HEARING INFORMATION

Hearing dates: October 5, 1992. Two (2) Sessions.

Hearing Location: Chicago, Illinois

### **CASE SUMMARY**

Claimant Mary Reardon ("Claimant") alleged omissions, unsuitability, breach of fiduciary duty, breach of implied covenant of good faith and fair dealing and a violation of NYSE Rule 342 by Respondents Dean Witter Reynolds, Inc. ("DWR") and Tom Swik. ("Swik"). The allegations arose from an investment in High Income Advantage Trust II ("HIAT II") made in September, 1988.

Claimant alleged never having significant experience in investing. She further alleged that her goal was a safe investment of the proceeds from the sale of her home. Claimant asserted that in September 1988, Swik invested her entire savings in HIAT II. Claimant alleged that as of July, 1990, her monthly income from HIAT II began to decline and by June, 1991, her monthly income had fallen by one-half. Claimant asserted that Respondents failed to acquaint her with the risks and disadvantages involved with an investment such as HIAT II. Claimant further argued that this investment was highly speculative and unsuitable for her. Lastly, Claimant alleged that she would not have invested in HIAT II if the nature of the investment had been disclosed and explained to her.

In their joint Statement of Answer, Respondents DWR and Swik denied each and every material allegation contained in the Statement of Claim. In addition, Respondents alleged that Swik advised Claimant to diversify her investment. Also, Respondents asserted that Swik repeatedly explained the risks of HIAT II to the Claimant. Respondents further alleged that Claimant's investment was suitable at the time it was made, that Claimant ratified her transaction and that she had failed to mitigate her damages. Respondents went on to assert that the Claimant's claim is barred by the applicable statutes of limitations and the doctrines of waiver, estoppel, and laches.

### **RELIEF REQUESTED**

Claimant requested an award against Respondents as follows:

1. Rescission of the original \$80,000.00 purchase of HIAT II.
2. Pre-Award and post-award interest from the date of the original purchase at the maximum legal rate.

3. For costs of arbitration and expenses including: reasonable consulting fees, and any other costs deemed just and reasonable.
4. Punitive damages in an amount to be determined by the panel of arbitrators sufficient to punish Respondents for their willful and malicious conduct, and so as to set an example of Respondents and to defer future conduct of this type.

Respondents requested that Claimant's claim be denied in its entirety. Respondents also requested an award of their attorneys' fees and costs for defense of these claims.

#### OTHER ISSUES CONSIDERED & DECIDED

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 arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant Mary A. Reardon's Claims are hereby denied and dismissed with prejudice.
2. Each party shall bear their own attorneys' fees, consulting fees, and costs of this arbitration, except as set forth more fully below.

**FORUM FEES**

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

2 hearing sessions X \$ 500.00 = \$ 1,000.00  
(Less \$500.00 Hearing session deposit = \$500.00 due.)

Pursuant to Section 43(c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$150.00, and shall retain the hearing session deposit in the amount of \$500.00 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$500.00 are assessed against Claimant.

Pursuant to Sections 30(b) and 43(c) of the Code of Arbitration procedure, Respondent Dean Witter Reynolds, Inc. is hereby assessed postponement fees in the amount of \$500.00 for the postponement of the August 26, 1992 hearing date.

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

**CONCURRING ARBITRATORS**

Dated:

October 19, 1992

/s/Ronald J. Gerts  
Ronald J. Gerts  
Presiding Chair

October 10, 1992

/s/Edward C. Statton  
Edward C. Statton  
Public Arbitrator

October 8, 1992

/s/Thomas E. Haviland, Jr.  
Thomas E. Haviland, Jr.  
Industry Arbitrator

Date of service by the NASD:

October 16, 1992