

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

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

In the Matter of the Arbitration Between

**Name of Claimant(s)**

John R. Thompson, individually and  
as Trustee for Beneficial Life  
Insurance Company Combination  
Profit Sharing -- Money Purchase  
Plan and Trust and as Beneficiary  
of Certain Individual Retirement  
Accounts and Susan Thompson, an  
individual and Beneficiary of an  
Individual Retirement Account

NASD Arbitration  
No. 92-00882

**Name of Respondent(s)**

Dean Witter Reynolds, Inc.

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**REPRESENTATION**

For Claimants: Jean Pierre Nogues, Esq., Mitchell, Silberberg & Knupp, Los Angeles, California

For Respondent: Maren E. Nelson, Esq. and Richard W. Grime, Esq., Morrison & Foerster, Los Angeles, California

**CASE INFORMATION**

Statement of Claim filed: March 11, 1992

Claimants' Submission Agreements signed as follows:

John R. Thompson and Susan Thompson: October 24, 1991

John R. Thompson, Trustee: April 6, 1992

Statement of Answer of Respondent Dean Witter Reynolds, Inc.; Assertion of Affirmative Defenses and Counterclaim for Indemnity filed: June 12, 1992

Respondent's Submission Agreement signed: May 27, 1992

### **HEARING INFORMATION**

Pre-Hearing Conference: None

Hearing Dates/Sessions:      April 5, 1993 (two sessions)  
   April 6, 1993 (two sessions)  
   April 27, 1993 (two sessions)  
   April 28, 1993 (two sessions)

Hearing Location: Los Angeles, California

### **CASE SUMMARY**

Regarding investments in real estate limited partnerships, Claimants alleged violations of the Employee Retirement Income Securities Act (ERISA), the federal and state laws governing the sale of securities, fraud, misrepresentation, negligence, breaches of fiduciary duty and violations of the Rules of the New York Stock Exchange, Inc. and the National Association of Securities Dealers, Inc. (NASD) Rules of Fair Practice by Respondent Dean Witter Reynolds, Inc. Claimants further alleged that as a result of Respondent's conduct and that of its employee/agent, the Beneficial Life Insurance Company Combination Profit Sharing -- Money Purchase Plan and Trust (the Plan), and John R. Thompson as a participant have been damaged in an amount in excess of \$130,000.00. In addition, John R. Thompson and his wife Susan Thompson as beneficiaries of separate retirement accounts (IRA) alleged that they have sustained additional damages as a result of the conduct engaged in by Respondent with respect to the Plan and IRAs.

Respondent denied each and every allegation of wrongdoing made in the Statement of Claim and asserted affirmative defenses. In addition, Respondent

asserted a Counterclaim against Dr. and Mrs. Thompson for indemnity. Respondent asserted that in the event that it is found to be an ERISA fiduciary and an award is made against it, then Respondent is entitled to full and complete indemnity from Dr. Thompson for any losses that may have been suffered by the Plan. Respondent alleged that such indemnity arises since any loss or damage sustained by the Plan are embraced within the fiduciary obligations of the named ERISA fiduciary, Dr. Thompson. Respondent further alleged that as beneficiaries and account holders, Dr. and Mrs. Thompson assumed the entire responsibility and liability for any and all losses to the Plan and the IRA accounts and that any losses suffered by the Plan or the IRA accounts are the result of carelessness, negligence and culpable conduct on the part of Dr. and Mrs. Thompson and not Respondent.

Claimants denied each and every allegation of wrongdoing made in the Counterclaim and asserted affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested:

1. Compensatory damages of at least in excess of \$150,000.00 together with interest thereon;
2. The return of all commissions and fees paid to or received by Dean Witter Reynolds, Inc. in an amount to be determined according to proof;
3. Lost profits in an amount to be determined according to proof;
4. Attorney's fees and expenses;
5. In the alternative, rescission of the transactions referenced in the Statement of Claim, and the return of all consideration paid by Claimants to Dean Witter Reynolds, Inc. plus all special and consequential damages suffered by Claimants;
6. To the extent that any of the actions alleged are found to be prohibited transactions in violation of ERISA Section 406 or Internal Revenue Code Section 4975, that Dean Witter Reynolds, Inc. be directed to indemnify Claimant to the full extent of any tax liability interest and/or penalties imposed by the Internal Revenue Service or the Department of Labor;
7. Punitive and exemplary damages; and
8. Such other and further relief as the arbitration panel may deem just and proper, including, but not limited to, the assessment against Dean Witter Reynolds, Inc. of all arbitration fees, incurred in the proceeding.

Regarding Respondent's Counterclaim, Claimants requested:

1. That Respondent take nothing against Dr. and Susan Thompson by its Counterclaim; and
2. Such further relief as the arbitration panel deems just.

Respondent requested:

1. That Claimants take nothing against Dean Witter Reynolds, Inc. by way of their Statement of Claim;
2. That Dr. and Mrs. Thompson indemnify Dean Witter Reynolds, Inc. for any and all claims against it;
3. Such other and further relief as the arbitrators deem just and appropriate in the circumstances, including all costs of the arbitration proceedings and hearing.

#### **OTHER ISSUES CONSIDERED & DECIDED**

Claimants claims were originally filed in both the United States District Court for the Central District of California Case No. CV 91-1937 DWW (Bx) (Federal Case) and the Superior Court of California, County of Los Angeles Case No. BC 025 637 (State Case). Both the Federal Case and the State Case claims were referred to arbitration pursuant to stipulation entered into between Claimants and Dean Witter Reynolds, Inc. staying the court proceedings pending the outcome of the arbitration filed March 11, 1992.

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, including the positions of the parties relative to Respondent's Motion to Dismiss, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent's Motion to Dismiss the Claimants' claims based on the

provisions of California Code of Civil Procedure Section 339(1) and NASD Code of Arbitration Procedure Section 15 is denied.

2. Respondent Dean Witter Reynolds, Inc. is liable for and shall rescind the Dean Witter Income Partnership IV purchase and shall return the \$65,000.00 purchase price and commissions to John R. Thompson. The interest paid on Dean Witter Income Partnership IV shall be retained by John R. Thompson in lieu of an award of interest on the \$65,000.00 investment. John R. Thompson shall return to Dean Witter Reynolds, Inc. the Dean Witter Income Partnership IV documents representing ownership and execute any documentation required to transfer title.

3. All other claims by Claimants, including the claim for punitive and exemplary damages, are dismissed.

4. All claims by Respondent are dismissed.

5. The parties shall each bear their respective costs including attorney's fees.

### **FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall refund the \$750.00 hearing session deposit previously deposited by the Claimants and shall retain the \$750.00 hearing session deposit previously deposited by the Respondent. Forum fees are assessed against:

Dean Witter Reynolds, Inc. in the amount of \$2,250.00, calculated as follows: Four hearing sessions times \$750.00/session minus the \$750.00 hearing session deposit retained by the NASD.

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

### **ARBITRATORS**

<u>Name</u>	<u>Public/Industry</u>
Frank R. Smith, Esq.	Public Arbitrator
Ronald L. Cameron	Public Arbitrator

Jeannie C. Stilwell

Industry Arbitrator

Concurring Arbitrators' Signatures

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Frank R. Smith, Esq.

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Ronald L. Cameron

Jeannie C. Stilwell  
Jeannie C. Stilwell

Date of Decision: April 28, 1993

Date Served: 06/24/93