

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

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

Name of Claimant

Anne B. Dressler

Case No. 92-00888

Name of Respondent

Dean Witter Reynolds, Inc.

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**REPRESENTATION**

For Claimant, Anne Dressler ("Dressler"): James Keeney, Esq. of Nelson Hesse Cyril Smith Widman Herb Causey & Dooley.

For Respondent, Dean Witter Reynolds, Inc., ("Dean Witter") Melinda Herbst, Esq. of Dean Witter Reynolds, Inc.

**CASE INFORMATION**

Statement of Claim filed on: March 13, 1992.

Claimant's Submission Agreement signed on: March 10, 1992.

Respondent's Statement of Answer filed on: April 24, 1992.

Respondent's Submission agreement signed by Lorena J. Kern on behalf of the firm on: April 23, 1992.

**HEARING INFORMATION**

On January 8, 1993, a Pre-hearing Conference lasting one session was conducted with an arbitrator.

On April 14, 15, 16, 1993 and on May 26 and 27, 1993 hearings lasting twelve (12) sessions were conducted in Tampa, Florida.

### **CASE SUMMARY**

Claimant alleged that she is 79 years old and an unsophisticated investor and that upon opening her account with Respondent at the Bradenton office in October of 1986, she informed Respondent's Registered Representative, that her primary investment goal was the preservation of capital, and that she had no desire to engage in speculative or risky investments. Claimant further alleged that Respondent's representative, through various misrepresentations and omissions of material facts, fraudulently convinced Claimant to sign a written investment management agreement and thereafter negligently and wrongfully sold Claimant's stocks including her Bristol Meyers stock in its entirety and transformed Claimant's portfolio from a suitable common stock portfolio with quality issues to one consisting of unsuitable limited partnerships and other unsuitable investments to generate commissions and other benefits for Respondent.

Respondent denied all allegations of wrongdoing contained in the Statement of Claim and alleged that Claimant's stated investment objectives were capital appreciation and income as well as tax-advantaged income and growth with relative safety, that no purchases were made in Claimant's account until April, 1988 and that prior to purchase Respondent's representative thoroughly explained the investments which he suggested and provided Claimant with prospectuses for the funds and partnerships where applicable. Respondent maintained that all investments made were suitable and were authorized by Claimant, that contrary to the Statement of Claim, Claimant's portfolio, before she transferred the account, compared favorably with her original portfolio. Respondent further maintained that Claimant's portfolio increased and her taxes were reduced while she maintained her accounts with Respondent.

### **RELIEF REQUESTED**

Claimant, requested rescission in excess of \$100,000.00, punitive damages in excess of \$300,000, attorney's fees, costs and expenses of this proceeding.

Respondent requested dismissal of the Claim in its entirety and that costs should be assessed against Claimant.

### **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 originals remain on file with the NASD.

### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Dean Witter, is found liable and shall pay to Claimant the amount of \$42,500.00, exclusive of interest.
2. Claimant's requests for punitive damages, attorneys' fees, costs and expenses are hereby denied.

#### **OTHER COSTS**

The parties shall each bear their own costs and expenses incurred in connection with this proceeding.

#### **FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the Panel has assessed Forum Fee in the amount of \$9,300.00 (one (1) pre-hearing conference X \$300.00 plus twelve (12) hearing sessions X \$750.00).

1. Respondent is hereby assessed forum fees of \$9,300.00, \$750.00 of which shall be paid directly to Claimant, and \$8,550.00 of which shall be paid to the NASD.
2. The NASD shall retain the non-refundable filing fee of \$200.00 paid by Claimant.
3. Respondent shall reimburse the Claimant \$200.00 for the non-refundable filing fee.

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

#### **Concurring Arbitrators' Signatures**

/s/

\_\_\_\_\_  
Albert Roberts

Industry

/s/

\_\_\_\_\_  
Thomas E. Greef

Public

#### **Dissenting Arbitrator's Signature**

/s/

\_\_\_\_\_  
Cornelius J. McAuliffe, Esq.

Public

Arbitrator, Cornelius J. McAuliffe, Esq., dissents as to paragraph one (1) of the Award with respect to liability.

Date of Award: July 13, 1993