

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

John Peitzman

92-01304

Name of Respondents

Dean Witter Reynolds, Inc.,  
Carl F. Nelson & Leslie A. Nelson

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REPRESENTATION OF PARTIES

For Claimant at the hearing: Thomas B. Hatch, Esq. of Robins, Kaplan, Miller & Ciresi, Minneapolis, Minnesota.

For Respondents at the hearing: Scott E. Richter, Esq. of Popham & Haik, Minneapolis, Minnesota.

CASE INFORMATION

Statement of Claim filed: April 13, 1992.

Claimant's Submission Agreement signed on: April 7, 1992.

Joint Statement of Answer filed by Respondents on: June 18, 1992.

Respondent Dean Witter Reynolds Inc.'s Submission Agreement signed on: June 16, 1992. Respondents, Carl F. Nelson & Leslie A. Nelson's Submission Agreements signed on: June 17, 1992.

HEARING INFORMATION

Hearing date: November 11, 1992 for two (2) sessions,  
November 12, 1992 for two (2) sessions,  
November 16, 1992 for two (2) sessions.

Hearing Location: Minneapolis, Minnesota.

CASE SUMMARY

Claimant John Peitzman ("Peitzman") alleged that Respondents Dean Witter Reynolds, Inc. ("Dean Witter"), Carl F. Nelson, and Leslie A. Nelson ("the Nelsons") were negligent, breached fiduciary duties, committed common law fraud, engaged in negligent misrepresentation, violated Minn. Stat. Section 80A, and violated the Consumer Fraud Act.

Peitzman alleged that the Nelsons recommended an investment, U. S. Treasury Notes, and a financing arrangement, which was entirely unsuitable for Peitzman, given his age, investment experience, financial resources and investment objectives. Peitzman alleged that he had informed the Nelsons that he wanted an investment which would provide him with steady monthly income and he also stated that he was interested in helping his friend get a loan, but he did not want to loan any of his money directly to his friend. Peitzman alleged that the Nelsons nevertheless, recommended and structured a transaction which caused Peitzman to loan his money directly to his friend and to assume the entire risk that the friend would default, which he did.

Dean Witter and the Nelsons denied the allegations set forth in the Statement of Claim. Mrs. Nelson alleged that she told Peitzman that Dean Witter could lend money only against the value of securities in an account. Mrs. Nelson further alleged that she told Peitzman that Dean Witter could make a loan in a margin account upon a purchase of securities, and that she suggested that U. S. Treasury Notes would provide the most secure collateral for the loan and also would allow the largest possible loan. Mrs. Nelson alleged that she also made it clear that the loan would have to be made and the security held in the same account.

Dean Witter and the Nelsons alleged that Peitzman has no claim for negligence, no valid legal claim for breach of fiduciary duty, no valid legal claim for common law fraud or negligent misrepresentation, no valid legal claim for violation of the Minnesota Securities Act, no valid legal claim under the Minnesota Consumer Fraud Statute, and no valid legal claim for punitive damages.

Dean Witter and the Nelsons included a counterclaim in their Statement of Answer for all fees, expenses and other damages that they have incurred and will incur in the defense of the claim. Dean Witter and the Nelsons also included a third-party claim in

their Statement of Answer against Kirkendahl and Search In the Dale Records for indemnification or alternatively, contribution, in the event they are found liable.

**RELIEF REQUESTED**

Claimant requested an award in an amount in excess of \$70,000.00, interest from July 12, 1988 to the date of the award, costs, attorney's fees, punitive damages, and such other and further relief as is just and equitable under the circumstances.

Respondents requested that the Claimant's Statement of Claim should be denied in full and the Respondents should be awarded their fees, costs and other damages incurred in the defense of this case.

**OTHER ISSUES CONSIDERED & DECIDED**

The parties present at the hearing 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 original remains on file with the NASD.

By letter dated October 23, 1992, Respondents Dean Witter and the Nelsons withdrew their third-party claim they had filed against Kirkendahl and Search in the Dale Records.

**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. The Claimant's Statement of Claim is denied as against the Respondents, Carl Nelson and Leslie Nelson;
2. The Respondent, Dean Witter Reynolds, Inc., shall be and hereby is liable for, and shall pay to the Claimant, John Peitzman, damages in the amount of Fifteen Thousand Eight Hundred Twenty Four Dollars and Eighty Two Cents (\$15,824.82);
3. The Claimant's request for punitive damages is denied;
4. The Claimant's request for attorney's fees is denied;

5. The Claimant's request for interest is denied;
6. The Respondents, Dean Witter Reynolds, Inc., Carl Nelson and Leslie Nelson's counterclaim is denied;
7. Each of the parties shall bear their own costs and expenses incurred, other than those specifically enumerated for below under Forum Fees.

FORUM FEES

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

6 hearing sessions X \$500.00 = \$3000.00

Pursuant to Section 43(c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$150, and shall retain the hearing session deposit in the amount of \$500 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$1000 is assessed against Claimant John Peitzman, and \$1500 against Respondent Dean Witter Reynolds, only.

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

By The Arbitration Panel:

Dated:

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Stephen P. Kelly, Esq.  
Chairperson  
Public Arbitrator

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James H. Colburn  
Public Arbitrator

Jan. 11, 1993

Lawrence J. Welte  
Lawrence J. Welte  
Industry Arbitrator

Date of Service by the NASD: \_\_\_\_\_

5. The Claimant's request for interest is denied;
6. The Respondents, Dean Witter Reynolds, Inc., Carl Nelson and Leslie Nelson's counterclaim is denied;
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By The Arbitration Panel:

Dated:

\_\_\_\_\_  
9 January 1993

\_\_\_\_\_  
Stephen P. Kelly, Esq.  
Chairperson  
Public Arbitrator

\_\_\_\_\_  
James H. Colburn  
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Public Arbitrator

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Industry Arbitrator

Date of Service by the NASD: \_\_\_\_\_

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By The Arbitration Panel:

Dated:

January 8, 1992

Stephen P. Kelly  
Stephen P. Kelly, Esq.  
Chairperson  
Public Arbitrator

James H. Colburn  
James H. Colburn  
Public Arbitrator

Lawrence J. Welte  
Lawrence J. Welte  
Industry Arbitrator

Date of Service by the NASD: \_\_\_\_\_