

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Michael Dillard

92-01973

Name of Respondent

Dean Witter Reynolds, Inc.

REPRESENTATION

For Claimant at the hearing: Clell Cunningham, Esq. of Miller, Dollarhide, Dawson & Shaw, Oklahoma City, Oklahoma.

For Respondent at the hearing: David J. Restaino, Esq. of Dean Witter Reynolds, Inc., San Francisco, California.

CASE INFORMATION

Statement of Claim filed: July 16, 1992. Claimant's Submission Agreement signed on: July 8, 1992.

Statement of Answer filed by Respondent, on: October 14, 1992. Respondent's Submission Agreement signed on: October 12, 1992.

HEARING INFORMATION

Hearing Date: March 3, 1993 for two (2) sessions.

Hearing Location: Oklahoma City, Oklahoma.

CASE SUMMARY

Claimant Michael Dillard ("Dillard") alleged that Respondent Dean Witter Reynolds, Inc. ("Dean Witter") breached the settlement agreement entered into between the parties. Dillard, more specifically, alleged that he filed a lawsuit against Dean Witter for engaging in

unauthorized trading in his account. Dillard alleged that the parties settled the lawsuit before trial and entered into a settlement agreement whereby Dean Witter promised a credit of \$10,000 on commissions so Dillard could continue to transact business at Dean Witter's Oklahoma City branch, but all trading instructions should be reduced to writing. Dillard alleged that he gave written instructions to Dean Witter to purchase 1000 shares of IBM and 1000 shares of Novell. Dillard alleged that Dean Witter refused to purchase the stock. Dillard also alleged that Dean Witter did not purchase 200 shares of Microsoft which Dillard ordered on June 11, 1991.

Respondent Dean Witter alleged that they abided by the settlement agreement. Dean Witter alleged that they purchased securities pursuant to Dillard's request, and in so doing, dean Witter consistently adhered to its payment policy that a recalcitrant customer provide payment prior to the delivery of services. Dean Witter also alleged that Dillard has not stated a claim for breach of contract and has failed to state a cause of action for fraud.

RELIEF REQUESTED

Claimant requested \$100,000.00 as direct and punitive damages for fraud and deceit.

Respondent requested that the claims be denied in their entirety and that no damages be awarded. Respondent further requested that they be awarded their attorney's fees in the sum of \$5000 and costs for the defense of these claims.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter 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 arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

Claimant's Requests:

1. The Claimant's request for \$100,000.00 as direct and punitive damages for fraud and deceit is denied;

Respondent's Requests:

2. The Claimant's shall be and hereby are liable for and shall pay to the Respondent Dean Witter Reynolds, Inc. attorney's fees in the sum of \$5000 for filing a frivolous fraud claim.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

2 hearing sessions X \$500.00 = \$1000.00

Pursuant to Section 43c 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 \$800 previously paid to the NASD by the Claimant.

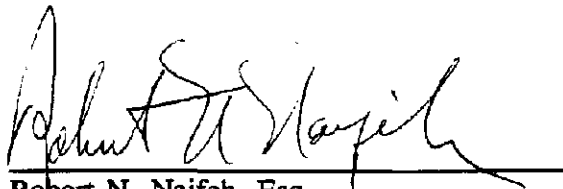
Additional forum fees in the amount of \$200 are assessed against Claimant Michael Dillard.

Additional forum fees assessed by the panel are payable to the National Association of Securities Dealers, Inc.

By the Arbitration Panel, Concurring:

Dated:

5-14-93


Robert N. Naifeh, Esq.
Presiding, Public Arbitrator

John R. Preston, Esq.
Public Arbitrator

William Massad
Industry Arbitrator

Date Award Served by the NASD: _____

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By the Arbitration Panel, Concurring:

Dated:

Robert N. Naifeh, Esq.
Presiding, Public Arbitrator

May 14, 1993


John R. Preston, Esq.
Public Arbitrator

William Massad
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