

N.A.S.D. AWARD

PUBLIC

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between

James D. Mitchell

Claimant

CASE #92-02049  
AWARD

vs.

Dean Witter Reynolds, Inc.

Respondent

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on June 19, 1992, Claimant James D. Mitchell who appeared Pro Se, alleged that on February 12, 1986 he purchased shares of Dean Witter U.S. Government Securities Trust for his account and when it became necessary for him to redeem the shares, he anticipated there would be no redemption fee so long as he redeemed the shares after February 12, 1992, the six year period. Claimant further alleged that he was advised by Respondent Dean Witter Reynolds, Inc. by and through, T. Andrews, Account Executive that a 1 percent fee would be imposed because of an interpretation of a paragraph in the prospectus whereby Respondent claimed the "six-year" period would extend to the end of February, 1986. Claimant contended that he was in process of purchasing a car whereby he needed his funds prior to March 3 or 4, the earliest he could expect funds from Respondent without penalty, at which time, Claimant took out a short-term bank loan rather than pay a fee of 1 percent. Claimant further contended that since his redemption involved a single purchase within a single month, whereby the provisions of the prospectus stated that the redemption penalty is applicable only "within the six year period", thus, Respondent is liable for his expenses incurred with the loan.

Respondent Dean Witter Reynolds, Inc. by and through their in-house counsel Paul Dubow, Esq., maintained that on February 5, 1986 Claimant James D. Mitchell purchased 4,761 shares of Dean Witter Government Securities Trust and subsequently on May 17, 1988 Claimant sold 2,633 shares of the trust, at which time, the 2,728 shares which remained in Claimant's account in February, 1992 were subject to a 1% deferred sales charge until February 29, 1992 whereby Respondent's account executive advised Claimant of the charge. Respondent further maintained that in pursuant to Dean Witter U.S. Securities Trust prospectus all payments made during a month are deemed to have been made on the last day of the month. Respondent

contended that Claimant was provided with a copy of this prospectus upon purchase whereby the account executive informed him that the shares could not be redeemed without incurring a deferred sales charge until the end of the month of the sixth anniversary of the purchase. Respondent further contended that Claimant's contention that he should be compensated for interest on a loan he took to purchase a motor vehicle is ludicrous and Respondent at all times acted in good faith and fully disclosed all sales charge features.

**RELIEF REQUESTED**

Claimant James D. Mitchell requested \$300.00 in actual damages.

Respondent Dean Witter Reynolds, Inc. requested the claim be denied in its entirety.

**AWARD**

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Bruce E. Fogarty, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on June 9, 1992 and not by the Respondent as required by Sections 12 and 13 of the NASD Code of Arbitration.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claim of Claimant, James D. Mitchell against Respondent Dean Witter Reynolds, Inc. is dismissed.
2. The parties shall bear their respective costs.
3. The \$30.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant James D. Mitchell shall be retained by the NASD, Inc.
4. Respondent Dean Witter Reynolds, Inc. is liable and shall pay to the Claimant James D. Mitchell the sum of \$15.00 as partial reimbursement.

AFFIRMATION

I, **BRUCE E. FOGARTY, ESQ.**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument. which is my oath and award.

Bruce E. Fogarty  
Signature of Arbitrator

DATE OF DECISION: January 6, 1993

STATE OF: *New York*

SS:

COUNTY OF: *New York*

On this day *31st* of ~~December~~ *1992*, before me personally appeared **BRUCE E. FOGARTY, ESQ.** to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Jane Polisar

JANE POLISAR  
Notary Public, State of New York  
No. 31-4858707  
Qualified in New York County  
Commission Expires April 14, 19 *94*