

PUBLIC

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :
David A. Clark & A. Dusty Clark :
Claimants :
vs. :
Dean Witter Reynolds, Inc. :
Respondent :

CASE #92-02231
AWARD

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on July 7, 1992, Claimant David A. Clark, who appeared Pro Se, alleged that Respondent Dean Witter Reynolds, Inc. failed to follow his request to rollover his 401K Plan before expiration in order to avoid paying taxes and penalties, and that this negligence caused a loss for which he should be compensated.

Respondent Dean Witter Reynolds, Inc. through its in-house counsel, Janet T. Love, Esq., maintained that the Claimant, David A. Clark, discussed his investment needs with its registered broker, and that he decided to diversify his money and invest just over half the funds in a U.S. Government Mutual fund and the remainder in stock mutual funds. The Respondent further maintained that "401K" or "rollover" or "retirement" never came up in discussion and that the Claimant never expressed concern about the account not being a retirement account until the tax man told him he would have to pay taxes and penalties on the original deposit.

RELIEF REQUESTED

Claimants David A. Clark & A. Dusty Clark requested \$2,969.00 in actual damages.

Respondent Dean Witter Reynolds, Inc. requested the claims of the Claimants be dismissed.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Edward J. Hanigan, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on August 17, 1992 and by the Respondent on August 3, 1992.

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. Respondent Dean Witter Reynolds, Inc. is liable and shall pay to the Claimants David A. Clark and A. Dusty Clark \$519.00 in actual damages.
2. The parties shall bear their respective costs.
3. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc. Respondent Dean Witter Reynolds, Inc. is liable and shall pay \$125.00 to the Claimants as reimbursement.

AFFIRMATION

I, **EDWARD J. HANIGAN**, 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.



Signature of Arbitrator

DATE OF DECISION: November 4, 1992