

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

William H. Myers
Viola J. Myers

Case No. 92-02686

Name of Respondent(s)

Dean Witter Reynolds, Inc.
Harlan Wilson

REPRESENTATION

For Claimants, William H. and Viola J. Myers ("Myers"): Adam S. Doner, Esq. of Davis, Gordon & Doner, P.A.

For Respondents, Dean Witter Reynolds, Inc. ("Dean Witter") and Harlan Wilson ("Wilson"): George D. Sullivan, Esq. of Dean Witter.

CASE INFORMATION

Statement of Claim filed: August 10, 1992. Claimants' Submission Agreement signed on: August 7, 1992.

Respondents', Dean Witter and Wilson, Statement of Answer filed: October 21, 1992. Respondents did not file a Submission Agreement as required by Sections 12 and 25 of the Code. However, they submitted on the record at the hearing by counsel.

HEARING INFORMATION

On August 4 and 5, 1993, in Fort Lauderdale, Florida, hearings lasting four (4) sessions were conducted.

CASE SUMMARY

Claimants alleged that they communicated their no-risk investment objectives to their stock broker; that based upon those objectives suitable purchases were made; however, subsequently Respondents, through Wilson, advised Claimants to liquidate those positions and reinvest the proceeds into a junk bond fund which was an unsuitable investment; and, that Respondents' liability is premised upon the following: breach of fiduciary duty, negligent misrepresentation, innocent misrepresentation, violation of federal securities laws, negligent supervision, negligent hiring, and negligent retention.

Respondents denied all allegations of wrongdoing and alleged that all of the transactions in Claimants' account were consistent with their expressed financial goals and suitable for their investment objectives and financial status; that the transactions were authorized and effectuated with Claimants' knowledge and consent; and, that market conditions not within Dean Witter's or Wilson's control caused the losses.

Respondents alleged the affirmative defenses of failure to state any valid claim upon which relief can be granted; that all common-law tort claims are barred by the Economic Loss Rule; statute of limitations; and ratification of the alleged wrongdoing.

RELIEF REQUESTED

Claimants requested damages in excess of \$50,000.00, together with interest, costs and reasonable attorney's fees.

Respondents requested dismissal.

OTHER ISSUES CONSIDERED & DECIDED

1. During the hearing of this matter, Claimants' request for attorney's fees was withdrawn.
2. 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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Dean Witter and Wilson are found liable, jointly and severally, and shall pay to the Claimants the amount of \$25,000.00 in compensatory damages, inclusive of interest.
2. Claimants request for costs is denied.
3. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including attorney's fees.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$2,000.00 (4 sessions x \$500.00).
2. Claimants are hereby assessed \$1,000.00, for which the NASD shall retain the \$500.00 previously deposited in partial satisfaction thereof, leaving a balance due to the NASD of \$500.00 payable to the National Association of Securities Dealers, Inc.
3. Respondents, Dean Witter and Wilson are hereby assessed \$1,000.00, jointly and severally, payable to the National Association of Securities Dealers, Inc.
4. The NASD shall retain the non-refundable filing fee of \$150.00 paid by the Claimants.

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

Concurring Arbitrators' Signatures

151
Stephen G. Melcer, Esq.

Public/Chairman

151
Ralph M. Byer

Industry

151
Stuart I. Stern

Public

9/25/93
Date of Decision