

**N.A.S.D. AWARD**

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between

Name of Claimant

Joy R. Schott-Kron

and

92-03111

Name of Respondents

Dean Witter Reynolds, Inc.

Alice Fisher

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**REPRESENTATION OF PARTIES**

Joy R. Schott-Kron ("Claimant") was represented by JoAnn Weinstein, Esq. of Davis, Lerman & Weinstein, Denver, CO.

Dean Witter Reynolds, Inc. and Alice Fisher ("Respondents") were represented by David P. Restaino, Esq. of Dean Witter Reynolds, Inc., San Francisco, CA.

**CASE INFORMATION**

The Statement of Claim was filed on or about September 15, 1992. Submission Agreement of Claimant was signed on September 9, 1992.

Statement of Answer was filed by Respondent on or about October 26, 1992. Submission Agreement of Respondent Dean Witter Reynolds, Inc. was signed on October 21, 1992 by David P. Restaino. Submission Agreement of Respondent Alice Fisher was signed on October 8, 1992.

**HEARING INFORMATION**

A pre-hearing conference was held on April 26, 1993 for one (1) session.

The hearing was held on Tuesday, October 5, 1993 for two (2) sessions and Wednesday, October 6, 1993 for two (2) sessions in Denver, Colorado for a total of four (4) hearing sessions.

### **CASE SUMMARY**

Claimant alleged violations of state and federal securities laws and rules of the N.A.S.D. The specific allegations included that Respondents failed to disclose material facts in connection with the investments made in her account and that Respondents engaged in trading activities which were highly speculative and not suitable for her in light of her investment objectives and financial position. Claimant stated that she did not understand the nature of or the reason for any of the trades in her account. Claimant further stated that she thought that she was investing in a conservative investment when she purchased a bond fund.

Respondents denied the allegations set forth in the Statement of Claim and stated that the Claimant had decided to seek a higher rate of return than she was receiving from her existing stock portfolio and that the Claimant had decided to minimize her tax burden. Respondents further stated that the Claimant knew and accepted the risks to her principal in order to receive higher income. Respondents also asserted the following affirmative defenses: failure to mitigate; the claims are time barred under the applicable statutes of limitation; and the claims are barred by the doctrines of waiver, estoppel and laches.

### **RELIEF REQUESTED**

Claimant requested an award of actual damages, interest, costs and expert witness fees in an amount in excess of \$75,000.00 against Respondents Dean Witter and Fisher, punitive damages in an amount in excess of \$100,000.00, reasonable attorney's fees pursuant to C.R.S. §11-51-125, and for such other relief as allowed by law and as the arbitration panel deems just and equitable.

Respondents requested that the claims asserted in this matter be denied in their entirety and that no damages be awarded therefor, and that they be awarded their attorney's fees and costs for the defense of this matter.

### **OTHER ISSUES CONSIDERED & DECIDED**

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 original(s) remain on file with the N.A.S.D..

### **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 claims asserted in this matter shall be and hereby are dismissed in their entirety.
2. Each party shall bear its own costs, expenses and attorney's fees incurred in this matter not specifically enumerated herein.

### **FORUM FEES**

Pursuant to §43(c) of the N.A.S.D. Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("N.A.S.D.") shall **retain** the non-refundable filing fee in the amount of \$200.00 and shall **retain** as forum fees the hearing session deposit in the amount of \$750.00 previously deposited with the N.A.S.D. by the Claimant. Claimant shall pay to the N.A.S.D. the sum of \$750.00 and Respondents Dean Witter Reynolds, Inc. and Alice Fisher shall pay to the N.A.S.D. the sum of \$1,500.00 as forum fees.

Forum fees are calculated at the rate of \$750.00 per hearing session and \$300.00 for each prehearing conference, if any. **Fees are payable to the National Association of Securities Dealers, Inc.**

Dated:

s/ William M. Pendleton, Esq.  
William M. Pendleton, Esq.  
Public Arbitrator, Presiding Chair

October 27, 1993

s/ James J. Cronin, Esq.  
James J. Cronin, Esq.  
Public Arbitrator

October 25, 1993

s/ Fred Ott  
Fred Ott  
Industry Arbitrator

October 21, 1993