

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Lolita C. Garcia

#92-03233

Name of Respondents

Dean Witter Reynolds, Inc.
Julian H. Gingold

For Claimant Lolita C. Garcia ("Claimant"): Vincent L. Briccetti Esq. of Briccetti & Calhoun.

For Respondents Dean Witter Reynolds, Inc. ("DWR") and Julian H. Gingold ("Gingold"):
George D. Sullivan Esq. of Dean Witter Reynolds Inc.

CASE INFORMATION

Statement of Claim filed: September 22, 1992.

Claimant's Submission Agreement signed on: September 15, 1992.

Joint Statement of Answer filed by Respondents on: December 4, 1992.

Respondent DWR's Submission Agreement signed on: December 22, 1993.

Respondent Gingold's Submission Agreement signed on: June 22, 1993.

HEARING INFORMATION

Hearing Date/Sessions: June 22, 1993/2 sessions
 June 25, 1993/2 sessions

Hearing Location: NASD/ New York, NY

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CASE SUMMARY

Claimant, a 64 year old retired therapist, alleged she had transferred her account to Gingold after being introduced to him in 1984. She alleged that approximately \$135,000.00 was transferred to the new account and that she had informed Gingold of her investment objectives which were conservative in nature, relatively low risk and safety of principal.

Claimant also alleged that because she knew she would soon retire, she informed Gingold she planned to live on the income of the accumulated savings upon retirement. Claimant further alleged she informed Gingold she was not a sophisticated investor, and that he assured her he would not jeopardize the safety of her principal.

Claimant alleged Gingold purchased United States Treasury bonds, and Union Carbide corporate bonds among others and that income generated from these bonds was ultimately re-invested in stocks such as Old Stone Savings Bank. Claimant alleged she did not initiate any of the transactions and relied upon Gingold's recommendations. Further, Claimant alleged that when she questioned Gingold regarding her various investments he reassured her all of the investments were conservative and safe. Claimant alleged that in 1987, Gingold began to place her in unsuitable investments including moving funds out of a Dean Witter United States government money market fund into a Dean Witter High Yield Securities bond fund and the purchase of shares of American Savings Bank convertible preferred stock and Unisys Corp. stock. Claimant alleged she wrote several times to Gingold expressing her concern about the decrease in the net asset value per share of certain of her bond funds, had difficulty understanding his explanation and that he recommended she "hold all issues including the profitable ones." Claimant also alleged Gingold churned her account.

Claimant further alleged she met with Robert B. Lee ("Lee"), a Dean Witter Senior Vice President to discuss her concerns and following the meeting sent Lee a letter, dated December 3, 1990, detailing her claim and asking for reimbursement of her losses. Claimant alleged she did not receive a response.

Finally, Claimant alleged Respondents' conduct violated the federal securities laws and the rules of the NASD and the NYSE; that Respondents breached their contractual duties to her; breached their fiduciary duties; were negligent in the performance of their professional services and that DWR failed to use reasonable diligence in its supervision of Gingold.

Respondents denied they were liable to Claimant for damages and denied they violated any duty, obligation or responsibility owed to Claimant. Respondents maintained that all Claimants investments were suitable considering her investment objectives and financial status. Respondents maintained Claimant had been informed as to the risks inherent in her investments and that all trades were discussed and authorized by her.

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Respondents contended they made no misrepresentations or omissions of material fact to Claimant and that there was no intent by them to defraud Claimant. Respondents asserted extraordinary market conditions and events not caused by or in their control may have existed to cause certain losses alleged by Claimant. Finally, DWR asserted it had reasonable and adequate supervisory procedures of its account executives.

RELIEF REQUESTED

Claimant requested: compensatory damages in the amount of not less than \$62,540.00; punitive damages in the amount of not less than \$25,000.00; costs and attorneys fees.

Respondents requested: all claims be dismissed in their entirety; and costs.

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. Claimant Lolita C. Garcia's claims against Respondents Dean Witter Reynolds, Inc. and Julian H. Gingold are hereby dismissed;
2. Claimant Lolita C. Garcia's claim for punitive damages against Respondents Dean Witter Reynolds, Inc. and Julian H. Gingold is hereby dismissed;
3. Each party shall bear its own expenses, including attorneys' fees, except that Respondent Dean Witter Reynolds, Inc. is hereby liable and shall pay to Claimant the sum of \$650.00. Said amount to reimburse to Claimant the \$150.00 non-refundable filing fee and the \$500.00 hearing session deposit previously paid to the NASD by Claimant.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the \$150.00 non-refundable filing fee previously paid by Claimant and the following Forum Fees are assessed.

4 sessions X \$500.00 = \$2,000.00 minus hearing session deposit of \$500.00 = net \$1,500.00 due.

Forum Fees Assessed Against:

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1. Respondent Dean Witter Reynolds, Inc. is hereby liable and shall pay the NASD the sum of \$1,500.00.

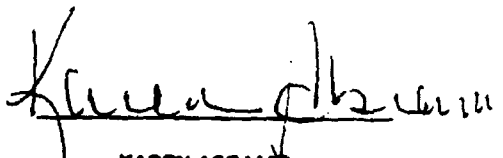
Fees are payable to the National Association of Securities Dealers, Inc.

Arbitrator Signature


Joseph B. Russell/Public Arbitrator

STATE OF *NEW YORK*
COUNTY OF *NEW YORK*

On this *13* day of *JULY*, 1993, before me personally appeared Joseph B. Russell known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that ~~she~~/he executed the same.


KAREN ABRAMS
Notary Public, State of New York
No. 31-4991408
Qualified in New York County
Commission Expires *2/9/94*

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1. Respondent Dean Witter Reynolds, Inc. is hereby liable and shall pay the NASD the sum of \$1,500.00.

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

Arbitrator Signature


Maive R. Giovati/Industry Arbitrator

STATE OF *NY*

COUNTY OF *Schenectady*

On this *15* day of *July*, 1993, before me personally appeared Maive R. Giovati known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that she/he executed the same.

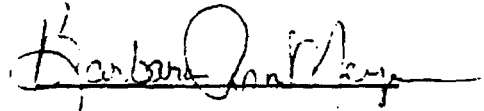
Sandro A. Rogers

SANDRO A. ROGERS
Notary Public, State of New York
No. 31-4833269
Qualified in New York County
Commission Expires Aug. 31, 199*3*

STATE OF New York

COUNTY OF Suffolk

On this 15th day of July 1993, before me personally appeared David I. Gilchrist known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that she/he executed the same.



BARBARA A. MEYER
Notary Public, State of New York
No. 4914539
Qualified in Suffolk County
Commission Expires December 14, 1993

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- 1.. Respondent Dean Witter Reynolds, Inc. is hereby liable and shall pay the NASD the sum of \$1,500.00.

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

Arbitrator Signature



David I. Gilchrist/Public Arbitrator