

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Name of Claimant

Joseph F. Pannell

No. 92-03255

Name of Respondents

Dean Witter Reynolds, Inc. and
Mark Loft

REPRESENTATION OF PARTIES

Claimant Joseph F. Pannell was represented by Richard E. Charlton, III, Esq. of the Winchester Law Firm, Memphis, TN.

Respondent, Dean Witter Reynolds, Inc. was represented by Edward M. Kaplan, Esq. of Armstrong, Allen, Prewitt, Gentry, Johnston & Holmes, Memphis, TN.

Respondent, Mark Loft was represented by Earle Schwarz, Esq. of Waring & Cox, Memphis, TN.

CASE INFORMATION

The Statement of Claim was filed with the National Association of Securities Dealers, Inc. ("NASD") on September 25, 1992.

Claimant, Joseph F. Pannell's Submission Agreement was signed on October 5, 1992.

The Joint Statement of Answer was filed with the NASD by Respondents, Dean Witter Reynolds, Inc. and Mark Loft on January 28, 1993.

Respondent, Dean Witter Reynolds, Inc.'s Submission Agreement was signed on January 27, 1993 by William Peterson, First Vice President.

Respondent Mark Loft's Submission Agreement was signed on January 26, 1993.

HEARING INFORMATION

Telephonic pre-hearing conferences were held on June 24, 1993 for one (1) hearing session and July 12, 1993 for one (1) hearing session. The hearing took place on June 29, 1993 for three (3) hearing sessions. August 23, 1993 for three (3) hearing sessions. September 27, 1993 for two (2) hearing sessions and September 28, 1993 for one (1) hearing session.

The hearing location was Memphis, Tennessee.

CASE SUMMARY

Claimant, Joseph F. Pannell ("Pannell"), alleged that Respondents, Dean Witter Reynolds, Inc. ("DWR") and Mark Loft ("Loft") made unauthorized and excessive trades in his retirement account. Pannell alleged that he advised Loft that he was unfamiliar with investments and would have to rely on Loft's recommendations and judgment. Pannell also advised Loft that he wanted a reasonable return on his retirement assets without risk because it was his retirement money. Pannell instructed Loft to obtain his prior approval on any purchases and sales in the IRA account and Loft said he would do this. Pannell asserted that instead of functioning in this manner, Loft undertook a course of unauthorized trades and proceeded to involve and subject Pannell's retirement account to numerous sales and purchases of stock and stock options without Pannell's prior approval.

In addition, Pannell asserted that Loft continually pushed DWR sponsored products including Dean Witter Realty IV Limited Partnership, Cornerstone 2 and Commodity Limited Partnerships. Pannell asserted that among the unauthorized trades in his IRA account were stocks or stock options in American Telephone and Telegraph, Bank America, Black and Decker, Boeing, Browning Ferris Industries, Bristol Meyers, Computer Associates, Dupont, EMC Corporation, Emerson Electric Company, Environmental Systems, General Electric, Home Shopping Network, The Limited, Midway Airlines, Nike, Pepsi Cola, Surgical Laser, Union Carbide and Whitman. These allegedly unauthorized transactions caused losses of approximately \$33,000.00 to Pannell through a combination of trading losses, commission charges and loss of interest and return on assets. Loft and DWR also placed Pannell's retirement funds in 50 units of Dean Witter Realty IV Partnership, Cornerstone 2 and 3 Commodity Limited Partnership which were not suitable for Pannell given his conservative investment guidelines.

Pannell's claims were based on unsuitable investments to his goals of income without risk, unauthorized and excessive trades in his retirement account, breach of contract, negligent supervision, reckless or willful misconduct and fraud, violations of the Tennessee Securities Act and violations of Section 10(b) and Rule 10(b)(5) of the Securities Exchange Act of 1934.

DWR and Loft denied the allegations of the claim. DWR and Loft also alleged that the

incidents of covered call writing in Pannell's account were in response to his repeated demands to make more money. DWR and Loft asserted that all trades were discussed with Pannell prior to execution and each was specifically approved by Pannell. In addition, Pannell directed trades against the advice of his broker. Loft's overall investment plan for Pannell was asserted to be well thought out, conservative, balanced and diversified. Pannell was allegedly responsible for losses in his account because of his decision to invest aggressively in tender offer targets.

RELIEF REQUESTED

Pannell requested an award against Dean Witter and Loft in the amount of \$72,400 for compensatory damages, post award interest at the Tennessee statutory rate of 10%, an appropriate award of exemplary damages and attorney's fees.

Dean Witter and Loft requested dismissal of the claim.

OTHER ISSUES CONSIDERED AND DECIDED

Prior to the hearing in this matter and after the arbitrators were empaneled, DWR requested that it be allowed to file a cross-claim against Loft. The panel considered the request and Loft's objections and denied the amendment to the pleadings to include the cross-claim pursuant to its authority set forth in Section 39(b) of the NASD Code of Arbitration Procedure.

The parties have agreed that the Award in this matter may be executed by 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 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. DWR and Loft are jointly and severally liable for and shall pay to Pannell without interest, with sum of Thirty-nine Thousand Five Hundred Sixty Dollars and No Cents (\$39,560.00);
2. In consideration for payment of the above sum, Pannell shall convey all right, title and interest he holds in Dean Witter Realty IV to DWR;
3. All other claims asserted against DWR and Loft are denied and dismissed in their

entirety: and.

4. The parties shall each bear their own costs, expenses and attorney's fees incurred in this matter.

FORUM FEES

Pursuant to Section 43(c) of the Code, the NASD shall retain the non-refundable filing fee in the amount of \$150.00, and shall retain the hearing session deposit in the amount of \$500.00 previously paid to the NASD by the Claimant.

Additional Forum Fees in the amount of \$5000.00 are assessed against DWR. Forum Fees were calculated on the basis of \$500.00 per hearing session for eleven (11) hearing sessions.

Additional Forum Fees assessed to the parties are payable to the National Association to Securities Dealers, Inc.

CONC

Dated:

October 25, 1993

October 25, 1993

/S/ Carey Allen
Carey Allen
Panelist
Industry Arbitrator

Date Award Served by the NASD: _____