

N.A.S.D., Inc.

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Darla J. Kimball

NASD Arbitration
92-03493

vs.

Name of Respondent(s)

Dean Witter Reynolds Inc. and Donald
K. Brooks, Jr.

REPRESENTATION

For Claimant: Wm. Patterson Cashill, Esq., Attorney and Counsellor at Law, Reno, NV

For Respondents: Curt H. Mueller, Esq., Dean Witter Reynolds, Inc., San Francisco, CA

CASE INFORMATION

Statement of Claim filed: October 14, 1992

Claimant's Submission Agreement signed: November 30, 1992

Statement of Answer filed by Respondents: January 28, 1993

Respondent's Submission Agreement signed as follows: Dean Witter Reynolds, Inc., on January 27, 1993 and Donald K. Brooks, Jr. on February 4, 1993.

HEARING INFORMATION

Pre-Hearing Conference: None.

Hearing Date(s)/Sessions: November 4, 1993 (two sessions)

Hearing Location: Las Vegas, NV

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CASE SUMMARY

Claimant alleged: Request for Accounting, Breach of Covenant of Good Faith and Fair Dealing, Breach of Fiduciary Duty, Negligence, Fraud, Intentional Infliction of Emotional Harm, Violation of NRS 90.570 and 90.590, Request for Declaratory Relief and lack of suitability in the purchase of Dean Witter U.S. Government Trust Fund, (USGVT) Dean Witter High Yield Funds (High Yield) and Dean Witter Cornerstone III (Cornerstone).

Claimant invested in excess of \$200,000.00 and informed Respondent that her objectives were protection of principal and generation of income for safe investments. Respondents failed to disclose that the various investments made by Respondents were high risk, low yield and highly speculative. Untrue statements were made and material facts omitted regarding the risk of the investments. Respondents also churned claimant's account for the sake of generating commissions for themselves.

Respondents knew Claimant feared the loss of her economic security if her affairs were mishandled and that she had safeguarded her savings following the death of her husband. Respondents breached their duty to exercise reasonable care in conducting Claimant's affairs by making unauthorized trades.

Respondents denied any wrongdoing in connection with Claimant's account and alleged: From 1986 through 1989, Claimant maintained a joint account with Dr. Donald Crenshaw (Crenshaw) and they repeatedly withdrew large sums of money from their account. Kimball and Crenshaw, in 1989 alone, jointly wrote \$72,115.00 in checks from their account and had \$22,634.00 in total VISA charges. Respondent Donald Brooks (Brooks) first met Claimant on July, 2, 1986 at a meeting which included Crenshaw. Kimball had received a lump sum of approximately \$300,000.00 due to her husband's death.

Brooks discussed various investment possibilities, including USGVT and High Yield, he thoroughly explained the past history of each of these funds, and their risks and provided Kimball and Crenshaw prospectuses. Both Kimball and Crenshaw were active at the first and in a subsequent meeting, which involved extensive questions and answers. As a result of these meetings and review of materials, Kimball and Crenshaw invested \$120,000.00 in High Yield, \$60,000.00 in USGVT and \$55,000.00 in the Active Asset Money Trust.

From the 1st half of 1986 through the latter part of 1989, Brooks had regular contact with both Kimball and Crenshaw and had periodic meetings in his (Brooks) office to discuss the account. In November of 1989 Kimball and Crenshaw terminated their joint account and it went into Kimball's name alone. At that time there was a large debit balance in the account due to heavy check writing and borrowing that had accumulated over the prior three years.

On or about April 1990, Kimball reviewed her account with her financial planner, who appeared to be satisfied with the reconciliation. On April 20, 1990 Claimant sold her remaining investments, resulting in a net out-of-pocket loss of less than \$2,000 on her USGVT and High

Yield investments. At the time Claimant acquired her High Yield shares, roughly 90% of all so-called "junk bonds" were held by institutional investors such as pension funds and insurance companies. The impact of the recession and government regulation of the savings and loan industry on the market could not be known.

RELIEF REQUESTED

Claimant requested:

- 1. Compensatory economics damages of \$70,000.00 (requested at hearing) originally in excess of \$100,000.00;**
- 2. Damages for emotional harm of \$500,000.00 (requested at hearing);**
- 3. Punitive damages of \$1.5 million (requested at hearing);**
- 4. For a decree compelling Dean Witter Reynolds and Donald K. Brooks to fully, accurately and honestly account to Claimant as to the following specifics:**
 - (a) All amounts received from Claimant;**
 - (b) The precise manner in which any monies from Claimant were invested;**
 - (c) The date of each purchase or sale of security by Brooks and Dean Witter Reynolds;**
 - (d) Whether any such purchase or sale was specifically authorized by Claimant;**
 - (e) The amount of each commission earned by Dean Witter Reynolds on each transaction;**
 - (f) Why each purchase and sale of any security was made by Brooks and Dean Witter Reynolds;**
 - (g) The amount of profit or loss realized on each transaction; and**
 - (h) The extent of any communications between Brooks and Dean Witter Reynolds and Claimant at any time concerning the transactions executed by Respondents on her behalf.**

5. The recovery of compensatory damages in an amount in excess of \$10,000.
6. The recovery of punitive damages in an amount in excess of \$10,000.
7. The entry of Declaratory Judgment stating the items as listed in paragraphs 46.1 through 46.4.
8. The recovery of her costs and attorneys' fee; and
9. Such other and further relief as the arbitrators may deem appropriate.

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 originals remain on file with the National Association of Securities Dealers, Inc. (NASD).

At the hearing, Respondents made a Motion to Dismiss based on Section 15 of the NASD Code of Arbitration Procedure, applicable Statute of Limitation and the doctrine of Laches. This motion was taken under advisement by the panel and then...

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, including post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents are jointly and severally liable for and shall pay Claimant \$33,501 in compensatory damages ;
2. All other claims are dismissed, including the claim for punitive damages;
3. Each party shall bear its own attorney's fees and costs.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following forum fees are assessed: The National Association of Securities Dealers, Inc. waived the \$750.00 hearing deposit previously deposited by the Claimant. Forum fees are assessed against:

Respondents, jointly and severally, for \$750.00 calculated as follows: Two hearing session times \$750/session, equals \$1,500.00.

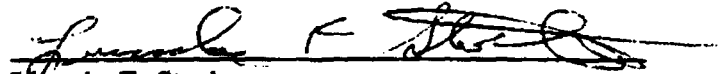
Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATORS

<u>Name</u>	<u>Public/Industry</u>
Ann M. Seward	Public
Lincoln F. Stock	Industry
Terrence M. Clauretie	Public

Concurring Arbitrators' Signatures

Ann M. Seward, Esq.



Lincoln F. Stock

Terrence M. Clauretie

Served: December 23, 1993

Date of Decision: _____