

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Doris Lee Bradley

vs.

NASD #92-03623

Name of Respondent

Dean Witter Reynolds, Inc.

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**REPRESENTATION**

For Claimant: Eric H. Brandenburg and Larry Brandenburg of Monterey, California

For Respondent: Curt H. Mueller, Esq. of Dean Witter Reynolds, Inc. of San Francisco, California.

**CASE INFORMATION**

Statement of Claim filed: October 27, 1992

Claimant's Submission Agreement signed: October 20, 1992

Statement of Answer filed by Respondent on: December 29, 1992

Respondent's Submission Agreement signed on: December 23, 1992

**HEARING INFORMATION**

Prehearing Conference(s) Date(s) Sessions: None

Hearing Date/ Sessions: June 18, 1993 (two sessions)

Hearing Location: San Francisco, California

## **CASE SUMMARY**

Claimant alleged: Lack of suitability, negligence and mismanagement in the purchase of Dean Witter High Yield Securities Fund (the Fund) and two limited partnerships, Krupp Insured Mortgage and Falcon Classic Cable Income Properties.

In October 1988, 1,984 shares of the Fund were transferred from Claimant's mother's account to Claimant's account. The Fund's net asset value (NAV) was decreasing but Respondent purchased 816 more shares. Claimant's husband died in 1989 and financial security became crucial to her. In 1989, 3,707 more shares of the Fund were purchased. The NAV for the Fund went down from 11.98 to 5.43.

The limited partnerships were purchased in April 1989, were high-risk, high commission products for sophisticated investors. Claimant was an unsophisticated investor and an elderly widow.

Respondent alleged: The investments in issue were part of a diversified portfolio which was consistent with her stated investment objectives. Most of Claimant's investment in the Fund was either inherited or purchased on an unsolicited basis.

Claimant's husband died in February 1989 leaving her with a net worth in excess of \$400,000 and liquid assets of approximately \$275,000. Prior to the transfer of the Fund into Claimant's account, Lawrence Lee, (Lee) Claimant's account executive, met with her and her brother and explained the nature of the Fund in detail, as well as other investment options. This process was repeated in January 1989. Claimant and her brother decided to purchase further shares of the Fund for her account. Claimant purchased the limited partnerships after full disclosure was made by Lee, including that the investments were not liquid. Each of the limited partnerships represented approximately 10% of Claimant's portfolio and 6.25% of her total assets.

Respondent also alleged the affirmative defenses of failure to mitigate damages, bar of the applicable statutes of limitation and the doctrines of waiver, estoppel and laches.

## **RELIEF REQUESTED**

Claimant requested:

Compensatory damages of \$90,269.47 for the loss in the Fund;

### **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 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. Respondent is liable for and shall pay Claimant \$5,000 in compensatory damages.
2. The parties shall each bear their respective attorney's fees.
3. The parties shall each bear their respective costs.

### **OTHER COSTS**

None.

### **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. shall retain the \$500 hearing session deposit previously deposited by the claimant. Forum fees assessed against:

Respondent for \$500.

calculated as follows: Two hearing session at \$500 hearing session, equals \$1,00, minus \$500 already paid by the claimant as a hearing deposit.

Fees are payable to the National Association of Securities Dealers,

**ARBITRATION PANEL**

**Name**

**Public/Industry**

John Pasley Wilson  
William A. Hage  
Sally G. Aelion

Public Arbitrator  
Public Arbitrator  
Industry Arbitrator

**Concurring Arbitrators' Signature**

  
\_\_\_\_\_  
John Pasley Wilson

**DATE SERVED: 06/28/93**

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William A. Hage

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Sally G. Aelion

**Date of Decision: \_\_\_\_\_**