

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Maureen Foley

92-03968

Name of Respondent(s)

Dean Witter Reynolds Inc.
Stephen L. Howlett

REPRESENTATION

For Claimant Maureen Foley: Richard M. Gelb, Esq., of the law firm of Gelb and Gelb, Boston, MA.

For Respondents Dean Witter Reynolds, Inc. and Stephen L. Howlett: David C. Boch, Esq., of the law firm of Bingham Dana and Gould, Boston, MA.

CASE INFORMATION

Statement of Claim filed: November 23, 1992.

Claimant's Submission Agreement signed on: November 20, 1992.

Joint Statement of Answer filed by Respondents Dean Witter Reynolds, Inc. and Stephen L. Howlett on: February 1, 1993.

Respondent Dean Witter Reynolds, Inc.'s Submission Agreement signed on: December 17, 1992.

Respondent Stephen L. Howlett's Submission Agreement signed on: February 2, 1993.

HEARING INFORMATION

Pre-hearing conference: June 30, 1993

Hearing Dates/Sessions: July 7, 1993 / One Session
 August 4, 1994 / Two Sessions
 November 4, 1994 / Two Sessions

Hearing Location: NASD offices located in Boston, MA.

CASE SUMMARY

Claimant alleged that she informed Respondents that she was an unknowledgeable and unsophisticated investor and was interested in safe investments that would generate more income than her savings account. Claimant further alleged Respondents recommended the purchase of numerous stocks as "great investments" and an analysis of Claimant's account by an expert has revealed that Respondents put Claimant's account at 100% risk because 100% of the securities in her account were common stocks that were speculative or high risk in nature and 76.5% of the stocks purchased in Claimant's account were bank stocks. Claimant further alleged several of the positions taken were extremely large in relation to account equity and this was made possible through the use of margin. Claimant further alleged in recommending and executing the transactions described above and in leading Claimant to believe that such transactions were suitable and appropriate for her investment goals, the Respondents acted with intentional and reckless disregard of Claimant's financial and investment needs and objectives and Respondents misled the Claimant and omitted and misstated the facts regarding the highly speculative and unsafe nature of the securities. Claimant further alleged the Respondents failed to act in compliance with the generally accepted standards of the securities industry and violated the securities laws and Respondent Dean Witter Reynolds, Inc. failed to adequately supervise its broker and enforce internal rules and guidelines and is liable under the theory of respondeat superior.

Respondents maintained by her Statement of Claim the Claimant contradicts sworn testimony she gave when she testified on behalf of her boss in an arbitration that he brought against Respondents involving the same securities that are at issue here and his claims in that case were rejected by the arbitration panel. Respondents further maintained Claimant specifically disclaimed any dissatisfaction with Respondent Howlett's handling of her account at that time, or any intent to sue him. Respondents further maintained the Claimant elected to follow in her own account the transactions that her boss had made in his

accounts despite Respondent Howlett's recommendations to the contrary. Respondents further maintained Mr. Howlett affirmatively attempted to dissuade the Claimant from following the trading pattern of her boss and he explained the risks of the securities she wanted to purchase, as well as the risks of margin trading and he urged her to be more conservative in her investments and Claimant chose not to follow Respondent Howlett's advice and when the stocks began to decline in value, Mr. Howlett urged the Claimant to sell them and Claimant failed to heed this advice. Respondents further maintained throughout the time Claimant did business with Mr. Howlett, she was at all times fully informed of the status of her account and her margin situation and she never once complained to Respondents regarding her account while she did business with them. Respondents further maintained they did not proximately cause the losses, if any, suffered by Claimant and Claimant cannot recover punitive damages under the applicable law.

RELIEF REQUESTED

Claimant requested damages of not less than \$40,847.00 together with punitive damages, interest and costs including reasonable attorneys' fees.

Respondents requested that the Claimant's claims be dismissed and that Respondents be awarded their costs and attorneys' fees.

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. All claims by the Claimant against the Respondents are dismissed in all respects.
2. The Claimant's request for punitive damages is denied.
3. Each party shall bear their respective costs including attorneys' fees.

FORUM FEES

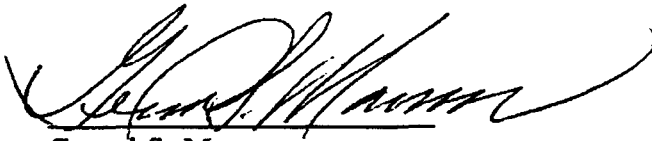
Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

One pre-hearing conference (\$300.00) plus five hearing sessions (\$2,000.00) = \$2,300.00 less Claimant's hearing session deposit \$400.00 = net \$1,900.00 due.

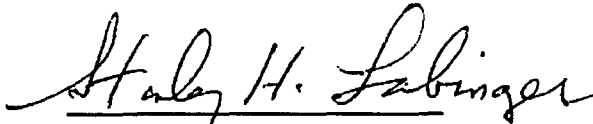
- a) The Claimant shall pay to the NASD the sum of \$950.00 less \$520.00 on deposit = net \$430.00 due.
- b) The Respondent Dean Witter Reynolds, Inc. shall pay to the NASD the sum of \$950.00 representing their share of the outstanding forum fees.

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

ARBITRATORS' SIGNATURES

A cursive handwritten signature of Gerard S. Marsan, written in black ink.

Gerard S. Marsan
Public Arbitrator

A cursive handwritten signature of Stanley H. Labinger, written in black ink.

Stanley H. Labinger
Public Arbitrator

A cursive handwritten signature of John A. Goc, written in black ink.

John A. Goc
Industry Arbitrator

Date of Decision: December 14, 1994