

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Dean Witter Reynolds, Inc.

92-04137

Name of Respondent

Michael Fakih

REPRESENTATION

For Claimant: Dean Witter Reynolds, Inc. ("Dean Witter") was represented by Mark R. Werder, Esq. of Honigman Miller Schwartz and Cohn, located in Detroit, Michigan.

For Respondent: Michael Fakih ("Fakih") was represented by Walter L. Baumgardner, Esq. of Musilli, Baumgardner, Wagner & Parnell, located in St. Clair Shores, Michigan.

CASE INFORMATION

Statement of Claim filed: December 8, 1992.

Claimant's Submission Agreement signed on: December 4, 1992 by B. Carole Hoffman, Vice President and Senior Attorney, Dean Witter Reynolds, Inc.

Statement of Answer filed by Respondent on: March 3, 1993.

Respondent Michael Fakih did not file an executed Submission Agreement.

Claimant's Response to the Statement of Answer filed: March 17, 1993.

HEARING INFORMATION

Pre-Hearing Conference: September 16, 1993 for One (1) session before One (1) arbitrator.

Hearing Dates/Sessions: October 20, 1994 for Two (2) sessions;
November 11, 1994 for One (1) session.

Hearing Location: Detroit, Michigan.

CASE SUMMARY

Claimant alleged that Respondent Fakh failed to pay to Dean Witter the sum due on a debit balance left in his account after a liquidation of the account. The Statement of Claim specifically alleged that:

1. At the time that Fakh opened his account at Dean Witter, he entered into an agreement to arbitrate all disputes arising out of the account and acknowledging Dean Witter's right to sell any or all of the customer's interests to protect itself from the insufficiency of margin in the account;
2. In December 1991 and January 1992, Fakh traded mostly in the currency market. On January 17, 1992, Fakh placed several currency trade orders in his account. As a result of market volatility, the positions suffered a significant decrease in value;
3. Dean Witter, pursuant to the authority in the agreement, liquidated the account leaving a debit balance of \$82,803.74. Dean Witter twice made written demand for payment, but no response was received; and
4. On April 14, 1992, Dean Witter notified Fakh of its intention to arbitrate the dispute pursuant to the agreement. No election of an arbitration forum was received and Dean Witter notified Fakh on July 1, 1992 of its intent to file an arbitration before the NASD.

Respondent denied owing any sum alleged in the Statement of Claim, asserting that Dean Witter and its employees panicked and sold out the account without discussing with Fakh his ability to meet the margin call, and as a result, Dean Witter failed to follow its own Compliance Manual and breached Treasury regulations in handling the margin accounts.

Claimant denied the allegations of the Statement of Answer.

RELIEF REQUESTED

Claimant requested entry of an award against Fakh for actual damages in the sum of \$82,803.74 plus interest at the legal rate from January 17, 1992 to the date of the arbitration award; reasonable attorneys' fees and costs; and for such other relief as the panel saw fit to award.

Respondent requested that the Claim be dismissed; Respondent awarded all attorneys' fees; and that Respondent be restored to the position he would have been in had Dean Witter not liquidated the account.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Michael Fakih did not file an executed submission agreement, but answered, appeared and testified at hearing. In addition, the Customer Agreement executed by Respondent on October 22, 1991 included an arbitration agreement. After review of all the above, the Panel determined that they properly had jurisdiction of the matter pursuant to Section 12 of the NASD Code of Arbitration Procedure.

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 Michael Fakih is liable for and shall pay to Claimant Dean Witter Reynolds, Inc. the sum of \$82,803.74 as actual damages, plus interest in the sum of \$12,216.23;
2. In addition, the Respondent Michael Fakih is liable for and shall pay to the Claimant Dean Witter Reynolds, Inc. the sum of \$20,000 for the costs of collection, including attorneys' fees. In determining to award attorneys' fees, the Panel considered the arguments of the parties, and paragraph 13 of the Commodity Customer Agreement executed by the Respondent, Michael Fakih, on October 28, 1991, and determined that they had the authority to award attorneys' fees to the Claimant, Dean Witter Reynolds, Inc.; and
3. Any relief not specifically awarded is hereby denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed. One (1) pre-hearing conference for One (1) session before One (1) arbitrator = \$300.00; Three (3) hearing sessions x \$600.00 per session = \$1,800.00; Total Forum Fees = \$2,100.00.

The National Association of Securities Dealers, Inc. shall retain the \$500.00 claim filing fee and refund the \$600.00 hearing session deposit previously deposited by the Claimant, Dean Witter Reynolds, Inc. Respondent Michael Fakih is liable for and shall pay to the NASD the

sum of \$2,100.00 as forum fees.

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

Concurring Arbitrators' Signatures

Name

Date

/s/ Richard H. Potter
Richard H. Potter
Public Arbitrator
Chairperson

March 3, 1995

/s/ A. Robert Bliven
A. Robert Bliven
Public Arbitrator

February 17, 1995

/s/ Bruce F. Coleman
Bruce F. Coleman
Industry Arbitrator

February 13, 1995

For NASD Use Only
Date of Decision: March 6, 1995