

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

George Truman Ward and Margaret H. Ward

92-04293

Name of Respondents

Dean Witter Reynolds Inc.  
Scott H. Son

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**REPRESENTATION**

For Claimants George Truman Ward and Margaret H. Ward ("Claimants"):  
Katherine H. Kalinowski, Esq. of the law firm of Baber & Kalinowski, P.C.  
Fairfax, VA

For Respondents Dean Witter Reynolds Inc. ("DWR") and Scott H. Son  
("Son"): Carol B. Schachner, Senior Attorney at Dean Witter Reynolds, Inc.

**CASE INFORMATION**

Statement of Claim filed: December 23, 1992  
Claimants' Submission Agreement signed on: December 9, 1992

Joint Statement of Answer filed by Respondents DWR and Son (collectively  
referred to as "Respondents") on: March 15, 1993  
Son's Submission Agreement signed on: March 24, 1993  
DWR's Submission Agreement signed on: March 4, 1993

**HEARING INFORMATION**

Hearing Dates/Sessions:

December 15, 1993 - two sessions  
December 16, 1993 - one session  
May 5, 1994 - two sessions

May 6, 1994 - two sessions  
June 6, 1994 - two sessions  
June 8, 1994 - two sessions  
June 9, 1994 - two sessions

Hearing Locations: NASD Executive Offices, Washington, D.C. and the  
ANA Hotel, Washington, D.C.

### **CASE SUMMARY**

Claimants stated that although their account with Son was in both their names, George Truman Ward ("Ward") handled all transactions with Respondents. Ward alleged, among other things, that he told Son that Claimants investment objective was protection of their investments. Claimants alleged that Respondents failed to follow their stated investment objective. Ward alleged that he had little prior investment experience and he relied upon and followed Son's recommendations, including purchasing stock on margin. Ward alleged that Son induced him to purchase Americus Trust Kodak Scores ("Scores"). Ward alleged that Son made material misrepresentation regarding Score on a continual basis. Ward maintained that based on Son's misrepresentation he continued to invest in the Scores. Ward alleged that Son failed to disclose material information regarding the Scores such as the price that Kodak would need to reach before Claimants could make a profit as well as the expiration date of the Scores. Ward alleged that Son failed to disclose the risks associated with this investment. Claimants alleged that Son wrongfully induced Ward to make additionally investments in Scores and caused Claimants' account to be unduly concentrated in Scores. Ward alleged that whenever he voiced his concerns regarding the Scores, Son persuaded him to stay in the investments until even Son realized the investment was not likely to increase in value and that the Scores were likely to expire with little value if any. Ward alleged that Son failed to send a prospectus on Scores and other pertinent information concerning Scores even though Ward had repeatedly requested this information. Claimants alleged that Respondents violated the Securities and Exchange Act of 1934, specifically Sections 20(a) and 10(b) and Rule 10b-5 thereunder. Claimants alleged that Respondents violated the Virginia Code Section 13.1-502 and committed common law fraud and deceit.

Respondents denied each and every allegation of wrongdoing asserted by the

Claimants. Respondents maintained, among other things, that each and every purchase was authorized by Ward. Respondents maintained that the Scores were sold to Claimants following Sons in depth conversations with Ward. Respondents maintained that all attendant risks and rewards were disclosed and discussed with Ward. Respondents maintained that Ward was provided with documentation that described the Scores and that the literature stated that the Scores would terminate on April 15, 1992. Respondents maintained that Ward was aware that the Scores terminated on April 15, 1992. Respondents maintained that all decisions whether to purchase or sell the Scores were Ward's decision. Respondents maintained that, at all times, Son kept Ward informed regarding Claimants Score purchases. Respondents maintained that when Son obtained a prospectus on Scores he forwarded to Ward. Son maintained that he recommended to Ward that Claimants sell all their Scores, but that Ward rejected his advice and decided to wait until Scores traded at \$4. Respondents maintained that as the price of the Scores continued to drop, it was Wards decision to average down. Respondents maintained that the final decision to sell all the Scores in late March, 1992 was Ward's. Respondents maintained that Claimants failed to timely complain about this claim.

#### **RELIEF REQUESTED**

Claimants requested: trading losses in the amount of \$173,315.81, lost opportunity costs, margin interest, punitive damages in the amount of \$200,000.00, interest, costs and attorneys' fees.

Respondents requested: that Claimants' claim be dismissed in its entirety and that Respondents be awarded their costs and attorney's fees. Respondents maintained that under applicable case law as well as under the facts in this case, Claimants are not entitled to punitive damages.

#### **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 arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondent DWR is liable to the Claimants and shall pay to the Claimants the sum of \$11,625; inclusive of interest.
2. That Respondent Son is liable to Claimants and shall pay to the Claimants the sum of \$3,875; inclusive of interest.
3. All other claims asserted by Claimants, including their claim for punitive damages, is denied in their entirety.
4. The parties shall bear their respective costs including attorneys' fees, except for as specifically stated below.

#### **FORUM FEES**

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

13 hearing sessions X \$750 = \$9,750

Forum Fees Assessed Against the Claimants and Respondents equally so that Claimants are assessed forum fees in the amount of \$4,875, however, Claimants are entitled to offset this amount with their hearing session deposited of \$750 previously filed so that the amount due from the Claimants is \$4,125. Respondents are jointly and severally assessed forum fees in the amount of \$4,875.

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

Concurring Arbitrator's Signature

Name

Public/Industry

Michael Fischetti  
Michael Fischetti

July 25, 1994

NASD Date of Decision: July 29, 1994

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Robert E. McLaughlin, Esq.

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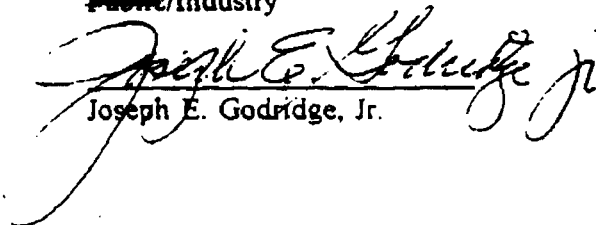
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Name JOSEPH E. GODRIDGE JR.

Public/Industry

  
Joseph E. Godridge, Jr.

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