

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

---

In the Consolidated Matter of the Arbitration Between

Name of Claimants

Ramon C. Evenson & Shelly Siemering

✓ 93-00375 & 93-00376  
Consolidated Award

Name of Respondent

Dean Witter Reynolds Inc.

---

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 2, 1993, Claimants Ramon C. Evenson and Shelly Siemering, by and through their counsel, Thomas L. Keidatz of Roels, Keidatz & Parent, DePere, WI, in a consolidated matter alleged that Claimant Ramon C. Evenson, is a retired pensioner whose maximum gross earnings prior to retirement was \$29,000.00 per year and after retirement, Claimant Ramon C. Evenson received a \$210.00 per month pension from his last employer. Claimants further alleged that their Shearson broker, Joann Hermans, moved to Respondent Dean Witter Reynolds, Inc. whereby she solicited their business and recommended they transfer their accounts to Respondent. Claimants further alleged that relying on Respondent by and through Joann Hermans, they transferred their accounts and subsequently on May 16, 1988 and September 20, 1988 Claimants were advised to each purchase 700 shares of Dean Witter Reynolds High Income Advantage Trust II at a price of \$10.00 per share for a total purchase price of \$7,000.00 each. Claimants contended that this was purchased with funds from their personal account and Claimant Ramon C. Evenson's IRA account. Claimants contended that they reinvested all dividends, which amounted to \$1,292.96, up to the date of sale, whereby Claimant Ramon C. Evenson reinvested all his dividends which amounted to \$1,397.35 up to the date of sale; however, the investment did poorly and the Claimants sold their shares on December 5, 1990 for the net sales prices of \$3,015.29 and \$3,307.98, respectively, which resulted in a loss of \$5,277.67 to Claimants and \$5,089.37 for Claimant Ramon C. Evenson, inclusive of the dividends the Claimants had reinvested. Claimants further contended that Respondent by and through Ms. Hermans, were aware of their investment goals of conservative growth and she was aware that Claimant Ramon C. Evenson had previously sustained a serious loss in mutual funds on "Black Monday". Claimants asserted that Respondent by and through Joann Hermans solicited Claimants change from their previous

investment, to Respondent's in-house high risk investment, knowing that Claimant Ramon C. Evenson was retired and living on social security retirement income. Claimants further asserted that this was an unacceptable risk investment for their economic category whereby Respondent by and through Ms. Hermans solicited the change from a safe money market account and IRA, to the Dean Witter Trust, which turned out to be a high risk junk bond fund and was an inappropriate solicitation to a retired individual with a small company pension, thus Respondent should be held liable for Claimants' losses.

Respondent Dean Witter Reynolds, Inc. by and through Linda Poole, Assistant Vice President, maintained that Claimants Ramon C. Evenson and Shelly Siemering are attempting to recover a loss on the sale of an unprofitable closed-end corporate bond fund: High Income Advantage Trust II ("HIAT II") and their damage claim is based on two theories: lack of suitability and misrepresentation. Respondent further maintained that the HIAT II investment was suitable because it met Claimants stated investment objective of income and in fact, Claimants bought "junk bonds" both before and following the HIAT II purchase and have voiced no complaint about the securities. Respondent contended that no misrepresentations were made to Claimants whereby their account executive Joann Hermans explained the market risks to them before they bought HIAT II and they accepted the risk in the hope of receiving higher income, at which time, the HIAT II paid a higher return than some corporate bonds and Claimants remained satisfied so long as it generated the income they wanted. Respondent further contended that Ms. Hermans gave Claimants a prospectus before they bought HIAT II and Respondent mailed them another prospectus after the purchase with their trade confirmation. Respondent asserted that Claimants suffered a loss in HIAT II because of unforeseeable market factors outside the control of Respondent and for these reasons set forth, Respondent denies the complaint.

#### **RELIEF REQUESTED**

Claimants Ramon C. Evenson and Shelly Siemering requested \$5,278.67 in actual damages.

Claimant Ramon C. Evenson requested \$5,089.37 in actual damages.

Respondent Dean Witter Reynolds, Inc. requested that the claims be dismissed in their entirety.

#### **AWARD**

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Harry F. Peck, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on January 27, 1993 and by the Respondent on March 22, 1993 and July 16, 1993.

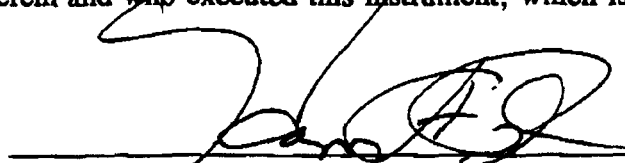
And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of Claimants Ramon C. Evenson and Shelly Siemering against Respondent Dean Witter Reynolds, Inc. are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants Ramon C. Evenson and Shelly Siemering shall be retained by the NASD, Inc.

The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by Claimant Ramon C. Evenson shall be retained by the NASD, Inc.

**AFFIRMATION**

I, **HARRY F. PECK, ESQ.**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Harry F. Peck, Esq.

**DATE OF DECISION:** August 31, 1993