

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration BetweenName of Claimant

Mitchell Namy

93-00485

Name of Respondent

Dean Witter Reynolds Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 9, 1993, Claimant Michael Namy, who appeared Pro Se, alleged that he started a trading account in January 1980 with Respondent Dean Witter Reynolds, Inc. where he has maintained an account continuously since then until the present and his Account Executive was Mr. V. William Obzut from January, 1980 to January, 1988, at which time, Mr. Obzut died suddenly and his Account Executive since then has been Mr. Douglas MacPhail. Claimant further alleged that he retired in June, 1990 and was on a fixed pension, which facts Mr. Obzut was aware of and in the middle of 1988, Respondent by and through Mr. Obzut recommended that Claimant trade on a margin basis, at which time, Claimant was 70 years old at the time and had invested about \$50,000.00. Claimant contended that soon after Mr. Obzut's death, he met with his new Account Executive, Mr. Douglass MacPhail, whereby Mr. MacPhail did not think he should be on margin and indicated he did not think highly of the stocks Claimant held, at which time, Respondent by and through Mr. MacPhail said he would put Claimant on a cash basis by selling the stocks over a period of time; however, after the 1987 crash, Claimant made seven payments of \$25,000.00 in margin calls and could only get on a cash basis by selling the stocks. Claimant further contended that considering the statute of limitations, his claim is based on the transactions from March, 1987 to December, 1989 in that after an analysis of his transactions and a comparison of the methods employed by Mr. Obzut and Mr. MacPhail led Claimant to conclude that there was wrongful misconduct on the part of Mr. Obzut whereby Claimant's account was mishandled and Respondent should be held liable for the actions of their Account Executive, thus Claimant should be reimbursed for the margin interest paid.

Respondent Dean Witter Reynolds, Inc. by and through their in-house counsel, Edward Larkin, Esq., maintained that more than ten years after he first borrowed money from Respondent to pay for his trading, Claimant Mitchell Namy wants to avoid the interest he paid as a result of his own decisions. Respondent further alleged that Claimant understood margin and authorized the trading in his own account. Respondent contended that the 1987 market crash, which was completely unforeseeable, caused Claimant to discontinue his use of margin and he cannot blame that event on Respondent, thus, Claimant should not recover the expense he willingly incurred.

RELIEF REQUESTED

Claimant Mitchell Namy requested \$9,281.16 in actual damages.

Respondent Dean Witter Reynolds, Inc. requested the claim be denied in its entirety and that costs be assessed against Claimant.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Stanley M. Stein, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on February 1, 1993 and not signed by the Respondent as required by Sections 12 & 13 of the NASD Code of Arbitration Procedure.


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 claim of Claimant Mitchell Namy against Respondent Dean Witter Reynolds, Inc. is dismissed.
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 Claimant Mitchell Namy shall be retained by the NASD, Inc.

Page Three
Award 93-00485

AFFIRMATION

I, STANLEY M. STEIN, 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.



Signature of Arbitrator

DATE OF DECISION: July 16, 1993