

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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**In the Matter of the Arbitration Between**

**Name of Claimants**

**Robert and Janet Sullivan**

**vs.**

**Case #  
93-00808**

**Name of Respondents**

**Dean Witter Reynolds Inc.  
Robert N. Scherzer**

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**REPRESENTATION**

For Claimants, Robert and Janet Sullivan ("Claimants"), Richard C. Heidlage, Esq. from the law firm of Heidlage & Reece, P.C., located in Boston, Massachusetts.

For Respondents, Dean Witter Reynolds, Inc. ("DWR") and Robert N. Scherzer ("Scherzer"), Elizabeth T. Hill, Esq., in-house counsel at DWR, located in New York, New York.

**CASE INFORMATION**

Statement of Claim was filed on March 3, 1993.

Claimant's Submission Agreement was signed on March 1, 1993.

Respondents did not file Submission Agreements but are required to submit to arbitration pursuant to Section 8 of the *Code of Arbitration Procedure* ("Code").

**HEARING INFORMATION**

Hearing Date/Sessions: February 20, 1995 - 2 sessions

Hearing Location: Boston Marriott Longwharf, located at 296 State Street, Boston, Massachusetts.

**CASE SUMMARY**

Claimants allege that Scherzer recommended that they purchase \$20,000 and \$4,000 worth of

Sun Distributors LP for their Individual Retirement Accounts ("IRA"). Claimants also allege that within seventy days the price dropped and they sustained losses. In addition, the Claimants allege that on April 13, 1987, Scherzer convinced them to purchase 2,400 shares of Coated Sales stock on the representation that it was a safe buy for 31% of their IRA portfolio. Thirteen months later, Coated sales stock price went down over \$9.00 per share.

In lieu of filing a Statement of Answer, Respondents moved to dismiss the Statement of Claim on the ground that the claims are not eligible for arbitration under Section 15 of the *Code* as well as under New York law.

In their Amended Statement of Answer, Respondents deny the allegations of wrongdoing, deny liability and interposed eleven affirmative defenses. Respondents state that the claim arising out of the purchase of the Sun Distributors LP was dismissed pursuant to Section 15 of the *Code* and that no claim has arisen out of Claimants' purchase of this investment in light of the Claimants' investment objectives and net worth and that Claimants should not be allowed to introduce evidence at the hearing on this matter. Respondents also allege that Coated Sales was not a speculative investment and that Claimants' losses were caused by the company's fraudulent misrepresentation of its value, but not by any conduct or omissions by the Respondents.

#### **RELIEF REQUESTED**

Claimants request an award of \$26,700.00.

Respondents request that the claims be dismissed.

#### **OTHER ISSUES CONSIDERED & DECIDED**

The Director of Arbitration denied Respondents' Motion to Dismiss with respect to purchases which occurred between March 1, 1987 and March 1, 1993. By letter dated July 15, 1994, Respondents moved to dismiss the Statement of Claim pursuant to Section 12(d) of the *Code* on the grounds that the stock which is the subject of the claim, Coated Sales, Inc., is the subject of a pending class action. Respondents also sought an adjournment of the July 19, 1994 hearing date to determine the effect of the court order covering the class action. After considering both parties' position, this arbitrator granted the adjournment.

By letter dated July 29, 1994, Respondents indicated that Claimants' claims were not covered by the class action and then sought leave to file an amended Statement of Answer. Claimants opposed such motion on the grounds that Respondents were advised by the NASD to file an Answer instead of a Motion to Dismiss and Respondents failed to do so.

Respondents then moved to amend their Statement of Answer. Claimant objected on the grounds that Respondents failed to timely file their answer even though the NASD staff member advised them that their Motion cannot be filed in lieu of their answer. This Arbitrator granted

Respondents' Motion and their answer is incorporated in the Case Summary portion of this decision.

Claims related to Sun Distributors LP were not presented to this Arbitrator for decision.

### **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. Dean Witter Reynolds, Inc., is hereby liable and shall pay Claimant Robert Sullivan, **TWELVE THOUSAND SEVEN HUNDRED AND FIFTY DOLLARS AND ZERO CENTS (\$12,750.00)**
2. Respondent, Dean Witter Reynolds, Inc., is hereby liable and shall pay Claimant, Janet Sullivan, **TWO THOUSAND TWO HUNDRED AND FIFTY DOLLARS AND ZERO CENTS (\$2,250.00).**
3. The claims against Respondent, Robert M. Scherzer, are denied.
4. Respondents, Dean Witter Reynolds and Robert M. Scherzer, are assessed forum fees as outlined in the Forum Fees section of this decision.

### **FORUM FEES**

Pursuant to Section 43(c) of the *Code*, the following Forum Fees are assessed against Respondent Dean Witter Reynolds and Robert M. Scherzer.

Non-refundable Filing Fee: \$100.00

Hearing Session Fees: \$600.00 (2 hearing session @ \$300.00 per session)

Total Fees: \$700.00

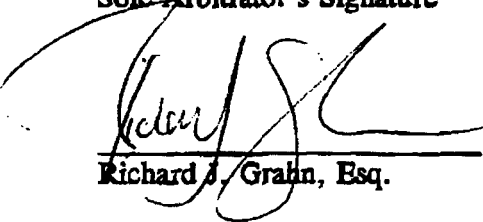
1. Claimants previously paid \$400.00 and are entitled to a refund in that amount.
2. Claimants were assessed and paid \$300.00 for postponement of the September 8, 1994 hearing.
3. Respondents were assessed \$300.00 for postponement of the July 19, 1994 hearing.
4. Therefore, the total fees assessed against Respondents are \$1,000.00. Respondents previously paid \$800.00 and owe a balance of \$200.00. Respondents shall satisfy this assessment by reimbursing Claimants \$200.00.

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5. The NASD will reimburse Claimants \$200.00.

Sole Arbitrator's Signature



Richard J. Grahn, Esq.

Date of Decision: 4-19-95