

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Richard and Joanne Agro

93-01113

Name of Respondent(s)

Dean Witter Reynolds, Inc.
Larry Sheffield

REPRESENTATION

For Claimants, Richard and Joanne Agro ("the Agros"): Mark A. Pepper, Esq. of the law office of Mark A. Pepper, Esq., Hollywood, Florida.

For Respondents, Dean Witter Reynolds, Inc. ("Dean Witter") and Larry Sheffield ("Sheffield"): Peter J. Aldrich, Esq. of Kelley, Aldrich & Warren, P.A., West Palm Beach, Florida.

CASE INFORMATION

Statement of Claim filed: March 23, 1993. Claimant's Submission Agreement signed on: April 26, 1993.

Statement of Answer filed by Respondents Dean Witter and Sheffield on: June 22, 1993. Respondent, Sheffield's Submission Agreement signed on: June 21, 1993. Respondent, Dean Witter's Submission Agreement signed on: June 22, 1993 by William B. Peterson on behalf of Dean Witter.

HEARING INFORMATION

On April 29, 1994 and May 9, 1994, prehearing conferences lasting two sessions were held via telephone conference call with an arbitrator.

On May 11 and 12, 1994 and June 6, 1994, hearings lasting six (6) sessions were held in Ft. Lauderdale, Florida.

CASE SUMMARY

Claimants alleged that: this is an action for damages arising from Respondents violation of the Florida Investor Protection and Securities Act; Rule 10(b)5 of the anti-fraud provisions of the federal securities law; a breach of fiduciary duty; common law fraud; and, failure to supervise. Claimants alleged that Respondents' misconduct also violated the NASD Rules of Fair Practice and the NYSE Rules for Conduct of Accounts. Claimants alleged that: Sheffield churned the Agros account by exercising effective control over the account and engaging in excessive trading for the purpose of generating commissions while disregarding the Claimants' investment objectives of preservation of capital and income; and, Sheffield's recommendations were unsuitable for Claimants because the account was overconcentrated in Circle K stock.

Respondents denied all allegations of wrongdoing and alleged that: no misrepresentations or omissions of material facts, negligence, failure to supervise or any other type of wrongdoing occurred; the Agros authorized every transaction in question and are responsible for their losses; the supervision of the Agros account was in accordance with industry standards and law; and, the Agros are barred from bringing this action because of their participation in a pending class action in which Dean Witter was released from any liability to the Agros relating to Circle K.

RELIEF REQUESTED

Claimants requested damages in the amount of \$100,042.00 plus attorney's fees, punitive damages and costs.

Respondents requested dismissal of the claim plus costs and attorney's fees.

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 arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Dean Witter and Sheffield are found liable, jointly and severally, and shall pay to Claimants the amount of \$70,634.00.
2. Claimants' request for attorney's fees, punitive damages and costs is denied.

3. Respondents' request for attorney's fees and costs is denied.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the arbitrators have assessed Forum Fees in the amount of \$3,600.00 (2 prehearing conferences with one arbitrator x \$300.00 each, plus six (6) sessions x \$500.00 per session).

1. Claimants are hereby assessed \$1,800.00 for which the NASD shall retain the \$500.00 hearing session deposit and the \$65.00 overpayment previously paid by Claimants in partial satisfaction thereof, leaving a balance due the NASD of \$1,235.00.

2. Respondent, Dean Witter is hereby assessed \$1,800.00 payable to the NASD.

3. The NASD shall retain the \$150.00 nonrefundable filing fee previously paid by Claimants.

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

Concurring Arbitrators' Signatures
Name

Public/Industry

15/
Ronald Thomas Spann, Esq.

Public/Chairman

15/
Leo Howard Kerns, Esq.

Public

15/
Herbert Karol

Industry

Date of Decision: 8-8-94