

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Dean Witter Reynolds, Inc.

93-01246

Name of Respondent

Robert C. Whitney

REPRESENTATION

For Claimant Dean Witter Reynolds, Inc. at the hearing: Gary Saretsky, Esq. of Hertz, Schram & Saretsky, P.C., Bloomfield, Michigan.

For Respondent Robert Whitney, at the hearing: Frank Vogl, Esq. of Best & Flanagan, Minneapolis, Minnesota.

CASE INFORMATION

Statement of Claim filed: March 29, 1993. Claimant's Submission Agreement signed on: March 25, 1993.

Statement of Answer filed by Respondent on: May 28, 1993. Respondent's Submission Agreement signed on May 25, 1993.

HEARING INFORMATION

Hearing date: October 13, 1993 for two (2) sessions.

Hearing location: Minneapolis, Minnesota.

### **CASE SUMMARY**

Claimant Dean Witter Reynolds, Inc. ("Dean Witter") alleged that Respondent Robert Whitney ("Whitney") owes money to them pursuant to the agreement which Whitney signed when he became employed with Dean Witter as an account executive. Dean Witter alleged that Whitney voluntarily terminated his employment thereby invoking Paragraph 4 of the agreement which provides that Whitney would pay Dean Witter the expenses incurred in training him.

Respondent Whitney alleged that no payment is due or owing Dean Witter. Whitney asserted the following affirmative defenses: 1. Statement of Claim fails to state a claim upon which relief can be granted; 2. duress, 3. estoppel; 4. failure of consideration; 5. laches, and, 6. statute of limitations.

### **RELIEF REQUESTED**

Claimant requested damages in the amount of \$28,000.00, interest, costs, attorney's fees, and any other relief which the panel deems just and proper.

Respondent requested that the claims be denied with prejudice, costs, attorney's fees, and all further relief as the panel deems just and proper.

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

At the hearing, counsel for Respondent Robert Whitney made a Motion to Dismiss the Statement of Claim. The panel denied the motion but decided that counsel for Respondent may renew their motion at the end of the hearing.

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. Respondent Robert Whitney shall pay to the Claimant, Dean Witter, the sum of Twenty Eight Thousand Dollars (\$28,000.00) on its contract claim;
2. Claimant's request for interest is denied;

3. Each of the parties shall bear their own costs and expenses, including attorney's fees, other than those specifically enumerated for herein.

**FORUM FEES**

Pursuant to Section 44c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

2 hearing sessions X \$600.00 = \$1,200.00

Pursuant to Section 44c of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$500.00, and shall retain the hearing session deposit in the amount of \$600.00 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$600.00 are assessed against Claimant Dean Witter Reynolds, Inc.

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

By The Arbitration Panel:

Dated:

November 3, 1993

s/s

James K. Langdon, II, Esq.

James K. Langdon, II, Esq., Presiding  
Industry Arbitrator

October 28, 1993

s/s

Roger George Lindquist

Roger George Lindquist  
Industry Arbitrator

November 2, 1993

s/s

Harold E. Gierke

Harold E. Gierke  
Industry Arbitrator

Date of Service by the NASD: November 18, 1993