

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Deborah J. Ervin

93-02072

Name of Respondents

Dean Witter Reynolds, Inc.  
Conway Brock, Jr.

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on May 25, 1993, Claimant Deborah J. Ervin, who appeared Pro Se, alleged that Respondent Dean Witter Reynolds, Inc., through its registered representative, Respondent Conway Brock, Jr., made unsuitable recommendations for her to purchase Public Storage Properties XV, a California L.P., for which she did not meet minimum suitability standards. The Claimant further alleged that the Respondents failed to disclose the risks involved with this L.P. and that the value of this investment was misrepresented to her from 1985 through 1991 on each monthly statement she received. Claimant Deborah J. Ervin contended that she has suffered damages due to the wrongdoing of the Respondents, and that, therefore, they should be held liable in this matter.

Respondents Dean Witter Reynolds, Inc. and Conway Brock, Jr., through their in-house counsel, Elizabeth Hill, Esq., maintained that the Claimant's claims of unsuitability are not eligible for submission, or consideration since the NASD administratively determined only the claims of fraudulent concealment fell within the eligibility period. The Respondents further maintained that they did not misrepresent the value of the L.P. on the monthly statements, and that the value of her units was reported in accordance with the annual audited financial statements of the two partnerships performed by Ernst & Young, a big six accounting firm. The Respondents also maintained that the value of the Claimant's units was reported exactly in accordance with audited value provided by Ernst & Young. Respondents Dean Witter Reynolds, Inc. and Conway Brock, Jr. contended that these partnerships lost value when the real estate market declined, that they cannot be held responsible for the national economy, and that therefore, the claims against them should be dismissed.

**RELIEF REQUESTED**

Claimant Deborah J. Ervin requested \$10,000.00 in actual damages.

Respondents Dean Witter Reynolds, Inc. and Conway Brock, Jr. requested that the claims of the Claimant be dismissed.

**OTHER ISSUES CONSIDERED & DECIDED**

Pursuant to Section 15 of the NASD Code of Arbitration Procedure the Director of Arbitration determined that allegations of unsuitability are not eligible for arbitration.

**AWARD**

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Herbert L. Blume, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on May 18, 1993, but not signed by the Respondents Dean Witter Reynolds, Inc. and Conway Brock, Jr. as required by Sections 12 & 13 of the NASD Code of Arbitration Procedure.

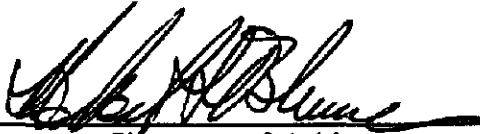
And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents Dean Witter Reynolds, Inc. and Conway Brock, Jr. are jointly and severally liable and shall pay to Claimant Deborah J. Ervin \$7,669.49 in actual damages, inclusive of interest.
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 shall be retained by the NASD, Inc. Respondent Dean Witter Reynolds, Inc. and Conway Brock, Jr. are jointly and severally liable and shall pay \$150.00 to the Claimant as reimbursement of the filing fee.

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**AFFIRMATION**

I, **HERBERT L. BLUME**, 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.

A handwritten signature in cursive script, appearing to read 'H. L. Blume', is written over a horizontal line.

Signature of Arbitrator

**DATE OF DECISION:** February 2, 1994