

## **NASD AWARD**

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between

Name of Claimants

John G. Salmon  
John Salmon P.C. Employee Profit Sharing Plan

and

93-02224

Name of Respondents

Dean Witter Reynolds, Inc.  
Todd Henderson

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### **REPRESENTATION OF PARTIES**

John G. Salmon and John Salmon P.C. Employee Profit Sharing Plan ("**Claimants**") were represented by John G. Salmon, Esq., Salmon, Godson & Nicholson, Englewood, Colorado.

Dean Witter Reynolds, Inc. ("**Respondent Dean Witter**") and Todd Henderson ("**Respondent Henderson**") (collectively as "**Respondents**") were represented by Michelle Bryan Oroschakoff, Esq., Dean Witter Reynolds, Inc., San Francisco, California.

### **CASE INFORMATION**

The Statement of Claim was filed on or about June 3, 1993. Submission Agreement of Claimant John G. Salmon and John Salmon P.C. Employee Profit Sharing Plan was signed on June 1, 1993.

Respondents' Motion to Strike or, in the Alternative, for a More Definite Statement, Answer and Counterclaim was filed by Respondents Dean Witter Reynolds, Inc. and Todd Henderson on or about August 31, 1993. Submission Agreement of Respondent Dean Witter Reynolds, Inc. was signed on August 31, 1993 by Michelle Bryan Oroschakoff. Submission Agreement of Respondent Todd Henderson was signed on August 23, 1993.

### **HEARING INFORMATION**

A pre-hearing conference was held on May 1, 1995 for one (1) session with Gerald Raskin, Esq., presiding. A hearing was held on Tuesday, December 12, 1995 in Denver, Colorado for a total of one (1) session.

### **CASE SUMMARY**

Claimant alleged that Respondents Dean Witter Reynolds, Inc. and Todd Henderson breached their fiduciary duty to them by recommending and selling limited partnership interests. Specifically, Claimants directed and effected unsuitable trades in their accounts and misrepresenting and/or failing to disclose material facts to them regarding the investments. Claimants also alleged that Respondent Dean Witter failed to supervise Respondent Henderson.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that Claimant John G. Salmon is a sophisticated wealthy investor and a lawyer whose practice includes filing securities law claims on behalf of investors. It was also stated by Respondents that prior to the Claimants' decision to invest, the Claimant and Respondent Henderson had numerous meetings where the Claimants' investment objectives, liquidity requirements, and investment opportunities were discussed. Respondents further stated that the Claimants made the investments complained of in this matter on June 3, 1987.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of compensatory damages in an amount in excess of \$75,000; pre and post award interest; punitive damages in such amount as the arbitrators deem appropriate to deter the Respondents from future acts of misconduct as those giving rise to this claim; and costs, expenses and reasonable attorneys' fees.

Respondent requested that the Statement of Claim be dismissed in its entirety and that they be awarded their costs and attorneys' fees incurred in defending this action.

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

Respondents filed two Motions to Dismiss. One Motion To Dismiss was based upon the statute of limitations and the other Motion to Dismiss was based upon Claimants' failure to comply with the Order of the panel Chair and Claimants' failure to produce documents and/or information pursuant to §32 of the NASD Code of Arbitration Procedure. On Tuesday, December 12, 1995, a hearing on the outstanding motions was conducted. The parties representatives participated telephonically.

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 original(s) remain on file with the NASD.

### **AWARD**

After considering the pleadings, the arguments presented at the hearing on the Motions to Dismiss and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Motion to Dismiss for Claimants' failure to produce documents pursuant to §32 of the NASD Code of Arbitration Procedure and for Claimants' failure to comply with the Order of the Arbitration panel to produce documents by May 10, 1995 is **granted**.
2. The Motion to Dismiss based upon the statute of limitations is **granted**.
3. Each party shall bear its own costs, expenses and fees incurred in this matter not specifically enumerated herein.

### **FORUM FEES**

Forum fees are calculated at the rate of \$500 per hearing session and \$300 for each prehearing conference, if any. There was one (1) session x \$300 and one (1) session x \$500 = \$800 in forum fees. Pursuant to §43(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall **retain** the non-refundable filing fee in the amount of \$150 and shall **retain** as forum fees the hearing session deposit in the amount of \$500 previously deposited with the NASD by the Claimant John G. Salmon and John Salmon P.C. Employee Profit Sharing Plan.

The National Association of Securities Dealers, Inc. ("NASD") shall **retain** the non-refundable filing fee in the amount of \$500 and shall **retain** as forum fees \$300 of the hearing session deposit in the amount of \$600 previously deposited with the NASD by Respondents and **refund** the balance of

**\$300 to Respondent Dean Witter Reynolds, Inc. Fees are payable to the National Association of Securities Dealers, Inc.**

Dated:

**/s/ Gerald Raskin, Esq.**

**December 19, 1995**

Gerald Raskin, Esq.

Public Arbitrator, Presiding Chair

**/s/ Morris J. Turkelson, Esq.**

**December 20, 1995**

Morris J. Turkelson, Esq.

Public Arbitrator

**/s/ Eugene M. Osman**

**December 19, 1995**

Eugene M. Osman

Industry Arbitrator