

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimants

John R. Pace and Joyce R. Pace, individually
and as Co-Trustees for the Bet Trading
Defined Benefit Plan

and

93-02312

Name of Respondents

Dean Witter Reynolds, Inc. and
Deric K. Martin

REPRESENTATION OF PARTIES

John R. Pace and Joyce R. Pace, individually and as Co-Trustees for the Bet Trading Defined Benefit Plan ("Claimants") were represented by Bruce I. Garfield, of Investors Arbitration Services, Inc., Woodland Hills, California.

Dean Witter Reynolds, Inc. and Deric K. Martin ("Respondents") were represented by Michelle Bryan Oroschakoff, Esq. of Dean Witter Reynolds, Inc., San Francisco, California.

CASE INFORMATION

The Statement of Claim was filed on or about June 10, 1993. Submission Agreement of Claimants John R. Pace and Joyce R. Pace, individually and as Co-Trustees for the Bet Trading Defined Benefit Plan was signed on June 4, 1993.

Statement of Answer was filed by Respondents Dean Witter Reynolds, Inc. and Deric K. Martin on or about October 8, 1993. Submission Agreement of Respondent Dean Witter Reynolds, Inc. was signed on October 6, 1993 by Michelle Bryan Oroschakoff. Submission Agreement of Respondent Deric K. Martin was signed on October 6, 1993.

HEARING INFORMATION

The hearing was held on Wednesday, March 16, 1994 for two (2) sessions in Denver, Colorado for a total of two (2) sessions.

CASE SUMMARY

Claimants alleged that their investments in certain securities were unsuitable in light of their investment objectives and that the recommendations made by Respondent Martin constituted a breach of fiduciary duty and violated the N.A.S.D. Rules of Fair Practice. Claimants also alleged that Respondent Martin had concealed material facts; made various untrue statements of material fact and omitted to state material facts to induce them into purchasing the limited partnership interests in dispute in this matter. Additional allegations stated by the Claimants include that Respondent Dean Witter Reynolds, Inc. failed to supervise the activities of Respondent Martin; breach of fiduciary duty; breach of implied covenant of good faith and fair dealing; negligent misrepresentation; and violations of the N.A.S.D. Rules of Fair Practice.

Respondents stated that in 1986, more than six years before filing this claim, the Claimants invested \$60,000, approximately 5% of their net worth, in four limited partnerships pursuant to a carefully planned program to diversify almost \$500,000. Respondents also stated that Martin's recommendations were designed to meet the stated goals of the Claimants of growth for five years followed by an income stream of \$6,000 per month. It was further stated that a year later, the Claimants decided to liquidate a portion of a government bond fund and to invest the proceeds in high yield bonds. In addition, Respondents stated that the Claimants were provided quarterly summaries of all of their accounts which detailed their investments and included the purchase price, current value and total value for each account and for the entire portfolio. In their Answer, Respondents asserted a Motion to Dismiss under §15 of the N.A.S.D. Code of Arbitration Procedure.

RELIEF REQUESTED

Claimants requested an award against Respondents as follows:

- * rescission of the purchase of \$60,000 plus interest at 10% from the time of the investments
- * compensatory damages of \$19,880 plus interest at 10% from the time of the junk bond fund investments
- * pre and post award interest as allowed by law
- * costs and expenses, including reasonable consulting fees, expert witness fees and any other costs deemed reasonable and just.

Respondents requested that this complaint be dismissed in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

By letter dated November 1, 1993, the Director of Arbitration made the following determination on the Respondents' Motion to Dismiss pursuant to §15 of the N.A.S.D. Code of Arbitration Procedure:

1. ..., The motion is denied in full regarding all purchases made on or after June 4, 1987 and claims regarding those purchases will be considered by the panel of arbitrators.
2. Claims regarding purchases made prior to June 4, 1987 will be permitted to go to the panel of arbitrators but only as to the allegations of wrongdoing made after June 4, 1987. All allegations of wrongdoing prior to June 4, 1987 are not eligible.

Respondents reasserted the Motion to Dismiss to the panel of arbitrators. After reviewing and considering the submissions of the parties, the arbitrators concurred with the Director's prior determination.

At the conclusion of the Claimant's case in chief, Respondent's made an oral Motion for Directed Verdict. After considering the arguments presented on behalf of the parties, the pleadings submitted and the evidence presented to that point, the panel denied the Motion.

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 N.A.S.D.

AWARD

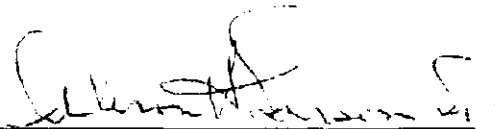
After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The claims asserted in this matter shall be and hereby are dismissed in their entirety.
2. Each party shall bear its own cost, expenses, and fees, including attorney's fees incurred in this matter not specifically enumerated herein.

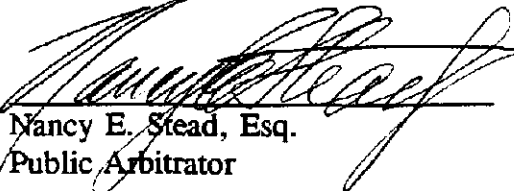
FORUM FEES

Pursuant to §43(c) of the N.A.S.D. Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("N.A.S.D.") shall retain the non-refundable filing fee in the amount of \$150.00 and shall retain as forum fees the hearing session deposit in the amount of \$500.00 previously deposited with the N.A.S.D. by the Claimants. Claimants shall be and hereby are liable for and shall pay to the N.A.S.D. the sum of \$500.00 as additional forum fees.

Forum fees are calculated at the rate of \$500.00 per hearing session and \$300.00 for each prehearing conference, if any. Fees are payable to the National Association of Securities Dealers, Inc.



Aleron H. Larson, Sr., Esq.
Public Arbitrator, Presiding Chair



Nancy E. Stead, Esq.
Public Arbitrator



Dunn Krahl
Industry Arbitrator

Dated:

March 17, 1994

March 17, 1994

March 17, 1994

Issued by NASD: March 20, 94