

N.A.S.D. FINAL ORDER

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Harold C. Vestrem

93-02632

Name of Respondents

Dean Witter Reynolds, Inc.:
William Bond

REPRESENTATION

For Claimant: Harold C. Vestrem ("Vestrem") was represented by Christopher L. O'Byrne, Esq., of McManus & O'Byrne, located in Port Washington, Wisconsin.

For Respondents: Dean Witter Reynolds, Inc. ("Dean Witter") and William Bond ("Bond") were represented by Paul D. Allen, Esq., of Dean Witter Reynolds, Inc., San Francisco, California.

CASE INFORMATION

Statement of Claim filed: July 6, 1993.

Claimant's Submission Agreement signed on: April 30, 1993.

Statement of Answer and Motion to Strike filed by Respondents Dean Witter and Bond on September 10, 1993.

Respondent Dean Witter's Submission Agreement signed on: September 9, 1993 by Paul D. Allen of Dean Witter Reynolds, Inc..

Respondent Bond's Submission Agreement signed on: September 7, 1993.

Motion to Dismiss filed by Respondents Dean Witter and Bond on: January 14, 1994.

HEARING INFORMATION

Pre-Hearing Conference: February 22, 1994 before Three (3) arbitrators for One (1) session

Hearing Dates/Sessions: None Held.

Hearing Location: Milwaukee, Wisconsin.

CASE SUMMARY

Claimant alleged that Respondent Bond, while employed by or acting as an agent for Respondent Dean Witter, recommended and engaged in unsuitable transactions in Vestrem's account effecting transactions which were excessive in size and frequency in view of Vestrem's resources, the character of his account, his investment objectives and his financial circumstances. Based upon the above allegation, Vestrem asserted claims for breach of fiduciary duty; culpable negligence or recklessness; unjust enrichment; and violation of the state securities law for fraud.

Respondents denied the material allegations of the Statement of Claim, alleging that:

1. In or about May of 1983, Vestrem was referred to Bond. Vestrem had experience trading stocks with another firm and advised Bond that his objectives were income and growth;

2. The total account value while at Dean Witter was approximately \$250,000.00, of which approximately 65-70% was held in U.S. Treasury bills, approximately 15-20% was held in cash, and approximately 10-15% was invested in a diversified portfolio of high quality, individual stocks;

John *db 1986*
1987

3. In 1987 and 1987, Vestrem became more active in trading, often calling Bond and discussing each transaction in advance. The details of each transaction were promptly reported to Vestrem by trade confirmations and monthly statements which showed the associated commissions, all deposits and withdrawals, the

specific securities held and their values, the total account value, and whether trades were solicited or unsolicited;

4. In April of 1987, the Dean Witter branch manager wrote to Vestrem noting the increased activity in his account. Vestrem called the branch manager and advised that he was happy with the advice and recommendations of Bond, but wanted to start more long-term oriented investments, which Bond immediately contacted Vestrem to discuss;

5. After the market crash of October, 1987, which Vestrem weathered without sustaining significant percentage losses, he began liquidating his holdings. By July of 1988, his portfolio consisted of a \$90,000.00 T-bill and \$51,000.00 in cash;

6. Dismayed with the low returns on his portfolio, Vestrem discussed several other investments with Bond, but in March of 1989, he suddenly cancelled a purchase and, shortly thereafter, closed his account.

The Respondents also asserted several affirmative defenses, including the following:

1. The claims are barred by the applicable statute of limitations and the NASD Code of Arbitration Procedure;
2. The claims are barred by Claimant's failure to mitigate damages;
3. The claims are barred by the doctrines of waiver, ratification, estoppel and laches;
4. The damages claimed were caused by the acts and omissions of the Claimant and not by the Respondents;
5. The claims are barred because the Claimant expressly and by his actions assumed the risk of his strategy; and
6. The claims are barred because the Claimant lacks standing to bring an action based upon regulations of the securities industry.

RELIEF REQUESTED

Claimant requested entry of an award against Respondents for the aggregate market losses, dividends and lost capital gains in the sum of not less than \$15,000.00; commissions and other remuneration paid Respondents, plus transfer taxes, in a sum of not less than \$14,000.00; margin interest paid to Respondents in the sum of not less than \$850.00; punitive damages in an amount of not less than \$100,000.00; reasonable attorneys' fees, and the costs and disbursements of the proceeding; and such other relief as the Panel deemed just and equitable.

Respondents requested that the arbitrators deny the damages requested by the Claimant, dismiss the claims in their entirety, assess the cost of the proceeding against the Claimant, award to Respondents their attorneys' fees and award the Respondents such other relief as the Panel determined was just and proper.

OTHER ISSUES CONSIDERED & DECIDED

On February 22, 1994, a telephonic pre-hearing conference was held before the full Panel to hear argument on Respondents' Motion to Strike and Motion to Dismiss. Neither Claimant's counsel nor Respondents' counsel appeared. The office of Claimant's counsel was contacted and a phone number left for counsel to appear. Pursuant to Section 26 and Section 29 of the Code of Arbitration Procedure, the Panel determined that Claimant or counsel had received due notice of the pre-hearing conference, had failed to appear, and that the hearing would continue in Claimant's absence. After hearing argument from Respondent, the Panel went into executive session. The Panel upon review of all pleading filed in the matter, and the arguments of Respondents, determined that this arbitration was dismissed without prejudice.

FINAL ORDER

After considering the pleadings and the arguments of counsel, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim is hereby dismissed without prejudice;
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) Pre-Hearing session before Three (3) Arbitrators = \$750.00.

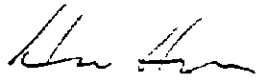
The National Association of Securities Dealers, Inc. shall retain the \$200.00 non-refundable claim filing fee and the \$750.00 hearing session deposit previously deposited by the Claimant, Harold C. Vestrem.

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

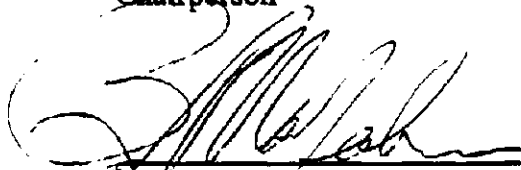
Concurring Arbitrators' Signatures

Name


Date


Herbert Neuer, Esq.
Public Arbitrator
Chairperson

March 1, 1994


Bonnie L. Macfarlane, Esq.
Public Arbitrator

March 9, 1994


James R. Schoenike
Industry Arbitrator

MARCH 7, 1994

For NASD Use Only

Date of Service of Order: 3-17-94