

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

Marian Plough,

Claimant,

v.

No. 93-02787

Thomas E. Bright, and  
Dean Witter Reynolds, Inc.,

Respondents.

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**REPRESENTATION OF PARTIES**

Claimant, Marian Plough ("Claimant") was represented by Ron Kent Hooper, Esq., Phoenix, Arizona.

Respondents Thomas E. Bright and Dean Witter Reynolds, Inc. ("Respondents") were represented by Timm A. VerDuin, Esq., of Dean Witter Reynolds, Inc., San Francisco, California.

**CASE INFORMATION**

The Statement of Claim was filed on or about July 15, 1993, and Claimant's Submission Agreement was signed on July 14, 1993.

Respondent's Answer was filed on or about September 9, 1993. Respondents' Submission Agreements were signed on August 6, 1993, and September 8, 1993, respectively.

**HEARING INFORMATION**

Hearing dates:       October 11, 1994. Two (2) sessions.  
                          October 12, 1994. Two (2) sessions.

Hearing Location:   Scottsdale, Arizona.

**CASE SUMMARY**

Claimant alleged that Respondents: violated A.R.S. Sections 44-1894, 1895, and Regulation R-14-4-118; made unsuitable investments for Claimant without disclosures required by law; breached their fiduciary duty to the Claimant; churned Claimant's account; violated A.R.S. Section 44-1521, et seq.; were negligent with respect to Claimant's account; failed to sell securities pursuant to Claimant's instructions prior to the 1987 crash; and breached their contract with the Claimant. Claimant also alleged that Dean Witter Reynolds, Inc. failed to adequately supervise Thomas Bright. The allegations arose out of transactions in the

following securities: U.S. Equipment Income Fund II; PS Partners IV, LTD; Cornerstone; and U.S. Government Securities.

In their Answer, Respondents categorically denied all allegations of wrongdoing in this case. Respondents denied each and every allegation of wrongdoing with which they were charged, and specifically denied that Claimant had been damaged as a result of any misconduct as alleged in the Statement of Claim. In addition, the following affirmative defenses were raised:

1. All claims alleged are barred by the doctrines of ratification, waiver, estoppel, and laches.
2. Claimant failed adequately to mitigate her damages, if any.
3. Claimant voluntarily and knowingly assumed the risks incident to her limited partnership and other investments and is therefore precluded from any recovery.
4. Claimant herself was negligent in and about the matters alleged in her Statement of Claim and, if Respondents' liability is deemed to exist, then the degree of Claimant's own negligence should be determined and her damages reduced accordingly.
5. To the extent that the Statement of claim seeks remedies which are not provided by the written contracts between the parties, those remedies may not be a part of any award against Respondents.

#### **RELIEF REQUESTED**

Claimants requested the following award of approximate losses against the Respondents:

Churning	\$100,000.00
US Equipment Income Fund III	65,000.00
PS Partners IV, LTD	43,000.00
Cornerstone	30,000.00
US Government Securities	20,000.00
Failure to sell before 1987 Crash	<u>40,000.00</u>
Total, without loss of return or interest	\$298,000.00

Claimant also requested an award of interest at the rate of 10 percent, from the date of the loss on her liquidated claims.

Respondents requested that the present claim be dismissed in its entirety and that they be awarded their costs and expenses incurred in defending this claim.

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

On or about September 13, 1993, Respondents filed their request to have this arbitration declared either wholly or partially ineligible for NASD Arbitration. Claimant filed her response with the NASD on or about November 9, 1993. On or about November 17, 1993, Respondents filed a Reply to Claimant's Response to their eligibility request. On February 4, 1994, after consideration of the documents submitted, as well as the pleadings, the Director of Arbitration determined that claims regarding purchases prior to July 14, 1987, would be permitted to go to the panel but only as to allegations made after July 14, 1987.

The parties have agreed that the Award in this matter may be executed by 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 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. Claimant Marian Plough's claims against Respondents Thomas E. Bright and Dean Witter Reynolds, Inc. are, and each of them, denied and dismissed with prejudice.

### **OTHER COSTS**

Each party shall bear its own costs associated with this arbitration, including attorneys' fees, except as set forth more fully below.

### **FORUM FEES**

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure (the "Code"), the following forum fees are assessed:

4 hearing sessions @ \$750.00 per session = \$3,000.00

Pursuant to Section 43(c) of the Code, the NASD shall **retain** the nonrefundable filing fee in the amount of \$00.00, and shall **REFUND** the hearing session deposit in the amount of \$1,000.00 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$1,500.00 are assessed against Respondent Thomas E. Bright.

Additional Forum fees in the amount of \$1,500.00 are assessed against Respondent Dean Witter Reynolds, Inc.

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

**CONCURRING ARBITRATORS**

Dated:

Name:

November 3, 1994

Mark D. Chester/s/  
Mark D. Chester  
Presiding Chair  
Public Arbitrator

October 27, 1994

Joseph F. Gross/s/  
Joseph F. Gross, Ph.D  
Public Arbitrator

October 28, 1994

Sarah Catherine Whitmore/s/  
Sarah Catherine Whitmore  
Industry Arbitrator

Date of Service by the NASD: 11-9-94