

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Ben Frank  
Howard H. Frank, P/O/A

93-03181

Name of Respondents

Steven R. Gurtov  
Barbara J. Armeli

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on August 13, 1993, Claimant Ben Frank, through his representative Howard H. Frank, with Power of Attorney, alleged that Respondents Barbara J. Armeli and Steven R. Gurtov, through the firm Dean Witter Reynolds, Inc., purchased for the Claimant's account, without his knowledge or authorization, Dean Witter Tax Exempt Trust, and further, that the Respondents misrepresented the terms of a bond (Hernando County Rev. Criminal Justice 8% due 7/1/2016 - Callable bond), which was also purchased for his account. The Claimant contended that these investments were not suitable for the Claimant, considering his age and investment knowledge, and that the Respondents should be held liable for the losses he has suffered from these investments.

Respondents Steven R. Gurtov and Barbara J. Armeli, through their in-house counsel at Dean Witter Reynolds, Inc., maintained that the bond purchased for the Claimant's account was not misrepresented to him, and that his objectives have always been tax exempt income securities, which this security was. The Respondents also maintained that the fact that this particular investment had a "call" feature was clearly explained on the back of the confirmation ticket. The Respondents contended that the Claimant authorized the purchase of the Dean Witter Tax Exempt Securities Trust, which was in accordance with his investment objectives, and contended further that there is no evidence of wrongdoing on behalf of the Respondents, and that therefore, the claim should be dismissed.

### **RELIEF REQUESTED**

Claimant Ben Frank requested reversal of the Tax Exempt Bond fund trade, along with \$1,187.50 in actual damages for the money lost in the sale of the Callable Bond.

Respondents Steven R. Gurtov and Barbara J. Armeli requested that the claims of the Claimant be dismissed.

### **AWARD**

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Joseph L. Bernstein, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on August 9, 1993 but not signed by the Respondents 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. The claims of the Claimant Ben Frank against Respondents Steven R. Gurtov and Barbara J. Armeli with regard to the Hernando County Rev. Criminal Justice Municipal bond, are hereby dismissed..
2. The Claimant shall receive the \*current cash value for the Dean Witter Reynolds, Inc. Tax Exempt Securities fund, to be placed in the Claimant's cash fund. Claimant Ben Frank shall not incur any further costs for this transaction.  
  
\* "current" shall be defined as the date of the reversal of the trade for the Tax Exempt Fund.
3. The parties shall bear their respective costs.
4. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. Respondents Steven R. Gurtov and Barbara J. Armeli shall reimburse the Claimant with \$125.00 representing this filing fee.

**AFFIRMATION**

I, JOSEPH L. BERNSTEIN, ESQ., 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.



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Signature of Arbitrator

**DATE OF DECISION:** March 10, 1994