

**NATIONAL ASSOCIATION OF SECURITIES DEALERS
AWARD**

In the Matter of the Arbitration Between

RICHARD ORTALE and STEPHANIE ORTALE,

Claimants,

v.

NASD No. 93-3994

DEAN WITTER REYNOLDS, INC.

Respondent.

Representation

For Claimant: Dennis Merenbach, Esq. and J. Leo Federman of Investors Rights Association
Santa Barbara, California

For Respondent: Timm Verduin, Esq. of Dean Witter Reynolds, Inc., San Francisco,
California

Case Information

Statement of Claim filed: September 27, 1993

Claimant's Submission Agreement signed: February 26, 1993

Statement of Answer filed on: December 3, 1993

Respondents' Submission Agreement signed on: November 22, 1993

Hearing Information

Prehearing Conference Date(s)/Sessions: None

Hearing Date/Sessions: December 7/two, 9/two, 1994

Hearing Location: Los Angeles, California

Case Summary

Claimant alleged:

Fraud, lack of suitability, churning, violation of New York Stock Exchange and National Association of Securities Dealers rules, breach of fiduciary duty, negligent misrepresentation, negligent supervision and breach of implied covenant of good faith and fair dealing in trading options in Claimants' account.

Claimants were small business owners with limited investment experience. Respondent engaged in an overabundance of naked option writing involving "puts," done without any regard to the financial safety and welfare of Claimants, but rather to generate commissions. These investments placed Claimants' portfolio into a high degree of risk. In a one month period, Respondent's broker committed the account into naked put positions involving as much as 30 contracts in volatile individual stocks.

Respondents denied each and every allegation of wrongdoing in the Claim and alleged:

The decision to write uncovered options in 1987 was made by Claimant Richard Ortale (Ortale) against the repeated advice of his Dean Witter Reynolds' (DWR) broker. Ortale is a very intelligent and sophisticated businessman with a multimillion dollar net worth. He understood the risks of such investments and is more than capable of bearing the \$75,000 loss incurred. Claimants' losses would have been much worse had it not been for their DWR broker's advice to close their uncovered put positions on October 16, 1986. Claimants remain customers of DWR and have deposited over \$800,000 into new accounts.

Relief Requested

Claimant requested:

1. Compensatory damages;
2. Preaward interest and postaward interest from the date of the original investments;
3. Costs;
4. Punitive damages.

Other Issues Considered and Decided

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 originals 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 is denied any recovery against Respondent;
2. The claim for punitive damages is denied;
3. The parties shall each bear their respective attorney's fees;
4. The parties shall each bear their respective costs.

Other Costs

None.

Forum Fees

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The National Association of Securities Dealers, Inc., shall retain the \$600 hearing session deposit previously paid by the claimant. Forum fees are assessed against:

Claimants, jointly and severally, for 1,200, minus \$600 already paid as a hearing deposit, leaving a balance of \$600;

Respondent for \$1,200,

calculated as follows: four hearing sessions at \$600/hearing session, equals \$2,400, divided equally by Claimants and Respondent.

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

Arbitration Panel

<i>Name</i>	<i>Public/Industry</i>
Donald Simons	Public
William Richardson	Industry
James Allaire	Public

Concurring Arbitrators' Signatures

Donald Simons

William Richardson



James Allaire

Date Served: 12-22-94

Date of Decision:

Arbitration Panel

<i>Name</i>	<i>Public/Industry</i>
Donald Simons	Public
William Richardson	Industry
James Allaire	Public

Concurring Arbitrators' Signatures

Donald Simons

William Richardson

James Allaire


Date Served: 12-22-94

Date of Decision: 12-21-94

Arbitration Panel

<i>Name</i>	<i>Public/Industry</i>
Donald Simons	Public
William Richardson	Industry
James Allaire	Public

Concurring Arbitrators' Signatures



Donald Simons

William Richardson

James Allaire

Date Served: 12-22-94

Date of Decision: