

**NATIONAL ASSOCIATION OF SECURITIES DEALERS  
AWARD**

---

In the matter of the Arbitration Between

Carroll C. Rogers  
Carroll C. Rogers Revocable Trust & IRA  
Claimant

NASD Arbitration  
No. 93-03997

v.

Dean Witter Reynolds, Inc.  
Ervin Booker  
Respondents

---

**REPRESENTATION**

For Claimant: Stephen Berger, Esq., Greenbaum & Ferentz, Newport Beach, California

For Respondent Dean Witter Reynolds: David P. Restaino, Esq., San Francisco, California

Respondent Ervin Booker represented himself.

**CASE INFORMATION**

Statement of Claim filed: September 30, 1993

Claimant's Submission Agreement signed: May 5, 1993

Respondents' Statements of Answer filed:

Dean Witter Reynolds: December 21, 1993

Ervin Booker: None submitted

Dean Witter's Supplemental Answer filed: January 26, 1994

Respondents' Submission Agreements signed:

Dean Witter Reynolds: December 17, 1993

Ervin Booker: None submitted

**HEARING INFORMATION**

Hearing Dates / Sessions: The evidentiary hearing was held in Los Angeles, California, as follows:

October 26, 1994 - 2 sessions  
October 27, 1994 - 2 sessions  
February 13, 1995 - 2 sessions  
February 14, 1995 - 2 sessions  
March 29, 1995 - 2 sessions

### **CASE SUMMARY**

Claimant alleged breach of fiduciary duty, fraud, negligence, failure to supervise, and violation of state and federal securities laws with respect to investments solicited from Claimant by Respondent Booker in a company being formed by Booker, REA Records. Booker continued to solicit funds from Claimant after leaving the employ of Dean Witter Reynolds until Claimant's life savings were depleted.

Respondent Dean Witter Reynolds denied the allegations of wrongdoing and denied liability for the actions of Respondent Booker, asserting that the dealings between Claimant and Booker were wholly outside the scope of Booker's employment, were unknown to and kept secret from Dean Witter Reynolds.

### **RELIEF REQUESTED**

Claimant requested compensatory damages of \$250,000, plus punitive damages, interest, attorney's fees, expert witness fees and costs of arbitration.

Respondent Dean Witter Reynolds requested dismissal of all claims.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Although Respondent Booker did not file a submission agreement and statement of answer, he did appear at hearing.

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 and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Booker is liable for and shall pay to Claimant the sum of \$250,575 plus interest at 10% from September, 1992, until paid.
2. Respondent Dean Witter Reynolds is liable for and shall pay to Claimant the sum of \$51,250.
3. The claim for punitive damages is dismissed.
4. The parties shall each bear their respective costs, including attorney's fees.

#### **FORUM FEES**

The filing fee and hearing session deposit required pursuant to Section 43(c) of the Code of Arbitration Procedure were waived by the Director of Arbitration at the time the claim was filed.

Respondent Dean Witter Reynolds is assessed all forum fees as follows:

10 hearing sessions @ \$750/session = \$7500

Fees are payable to the NASD, Inc.

#### **ARBITRATORS**


##### Name

Norman R. Cohen  
Maurice Schwarz, Jr.  
Larry Edmonson

##### Public / Industry

Public Arbitrator  
Industry Arbitrator  
Public Arbitrator

##### Concurring Arbitrators' Signatures



Norman R. Cohen

\_\_\_\_\_  
Maurice Schwarz, Jr.

I dissent from that portion of the award assessed to Dean Witter Reynolds, Inc.

\_\_\_\_\_  
Larry Edmonson

Served 5/15/95

Date of Decision: \_\_\_\_\_

1. Respondent Booker is liable for and shall pay to Claimant the sum of \$250,575 plus interest at 10% from September, 1992, until paid.
2. Respondent Dean Witter Reynolds is liable for and shall pay to Claimant the sum of \$51,250.
3. The claim for punitive damages is dismissed.
4. The parties shall each bear their respective costs, including attorney's fees.

#### **FORUM FEES**

The filing fee and hearing session deposit required pursuant to Section 43(c) of the Code of Arbitration Procedure were waived by the Director of Arbitration at the time the claim was filed.

Respondent Dean Witter Reynolds is assessed all forum fees as follows:

10 hearing sessions @ \$750/session = \$7500

Fees are payable to the NASD, Inc.

#### **ARBITRATORS**

##### Name

Norman R. Cohen  
Maurice Schwarz, Jr.  
Larry Edmonson

##### Public / Industry

Public Arbitrator  
Industry Arbitrator  
Public Arbitrator

##### Concurring Arbitrators' Signatures

\_\_\_\_\_  
Norman R. Cohen

  
\_\_\_\_\_  
Maurice Schwarz, Jr.

I dissent from that portion of the award assessed to Dean Witter Reynolds, Inc.

\_\_\_\_\_  
Larry Edmonson

Served 5/15/95

Date of Decision: April 24 1995

1. Respondent Booker is liable for and shall pay to Claimant the sum of \$250,575 plus interest at 10% from September, 1992, until paid.
2. Respondent Dean Witter Reynolds is liable for and shall pay to Claimant the sum of \$51,250.
3. The claim for punitive damages is dismissed.
4. The parties shall each bear their respective costs, including attorney's fees.

### **FORUM FEES**

The filing fee and hearing session deposit required pursuant to Section 43(c) of the Code of Arbitration Procedure were waived by the Director of Arbitration at the time the claim was filed.

Respondent Dean Witter Reynolds is assessed all forum fees as follows:

10 hearing sessions @ \$750/session = \$7500

Fees are payable to the NASD, Inc.

### **ARBITRATORS**

#### **Name**

Norman R. Cohen  
Maurice Schwarz, Jr.  
Larry Edmonson

#### **Public / Industry**


Public Arbitrator  
Industry Arbitrator  
Public Arbitrator

#### **Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Norman R. Cohen

\_\_\_\_\_  
Maurice Schwarz, Jr.

I dissent from that portion of the award assessed to Dean Witter Reynolds, Inc.

  
\_\_\_\_\_  
Larry Edmonson

Served 5/15/95

Date of Decision: 4/24/95