

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

Hearing Dates/Sessions: November 20, 1996/two sessions
November 21, 1996/two sessions
November 22, 1996/one session
February 19, 1997/two sessions

February 20, 1997/two sessions
February 21, 1997/two sessions

Hearing Location: NASD Regulation District Office
Cleveland, Ohio

CASE SUMMARY

Claimants alleged, among other things, that Respondents engaged in unsuitable trading in proprietary B-share mutual funds, carrying deferred surrender charges ("DSCs"), for six years (4 years for the Allstate Prime Trust). Claimant alleged that these investments were unsuitable and inappropriate for the Pension, Health and Welfare Fund and Supplemental Unemployment Benefit Funds, which were organized as trusts under the Taft-Hartley Act and subject to ERISA to provide recurrent benefits to more than 2,000 participants and beneficiaries. Claimants alleged that Respondents knew or should have known that the investments in the B-share mutual funds were contrary to the investment objectives of the Claimant Trust Funds. Claimants alleged that Respondents sold approximately \$10 million in mutual fund shares to generate unreasonable and excessive commissions for Respondents. Claimants alleged that Respondents received 4% commissions from the sales without disclosing this to Claimant. Claimants alleged that Claimants were damaged because the proprietary mutual funds of DWR charged excessive management fees.

Claimants also alleged that Respondents sold government securities, including U.S. Treasuries, FNMAs, GNMA's and bonds at undisclosed and excessive mark-ups. Claimants alleged that under investing standards, the Claimant Trust Funds were institutional investors, engaging in purchases in \$500,000.00 to \$1 million and larger investments. Therefore, Claimants alleged that Respondents handled transactions for Claimants that presented no risk to Respondents. Claimants alleged, however, Respondents imposed markups that were triple, quadruple, ten times and 15 times higher than what should have been charged to the Claimant Trust Funds. Claimants alleged that Respondent disclosed none of these mark-ups to Claimants.

Claimants alleged that Respondents knowingly failed to disclose facts material to the Claimant Trust Funds. Claimants alleged that Respondents violated ERISA, the NASD Rules of Fair Practice, NYSE Rule 105, Section 10(b) of the Securities Act of 1934, Rule 10-b-5 and common law principles of fraud.

Respondents denied the allegations of wrong-doing as asserted in the Statement of Claim. Respondents maintained that the mutual fund recommendations made by Myers were consistent with the Claimants articulated objectives for long term, fixed income investments providing each Fund with income. In addition, Respondents maintained that the investments were fully understood and approved by prior Union management. Respondents maintained that in addition to the accounts with Respondents, Claimants had substantial other benefit fund portfolio assets which were being separately managed by an independent investment consulting firm, all of which were neither the subject of coordination with Respondents nor the topic of any consultation whatsoever as to overall portfolio composition or diversification, changes in allocation, or plan needs as to investment policy or strategy.

Respondents further maintained that all commissions and the existence of declining deferred sales charges, if any, were fully disclosed in the prospectuses for the mutual fund investments provided to the Claimants. Respondents maintained that the Investment Advisor at the time of these Investments, Ronald Alexander, informed Respondents that the Claimants' intention was to hold these particular mutual funds as long term investments, i.e., more than six years, and thus would not likely ever incur any deferred

sales charge while enjoying the full benefit of the funds' performance. Respondents also maintained that the Claimants had not liquidated any of the mutual fund investments as of the time of filing the Statement of Claim and thus had not incurred any deferred sales charges. In light of the attractive performance of these investments thus far, it would be imprudent, and might even breach their ERISA fiduciary duties to their members, for the Claimants to liquidate these profitable mutual fund holdings prematurely.

Respondents maintained that the commissions and fees earned by Respondents were reasonable and in no way violated industry standards. Respondents maintained that Claimants were provided a prospectus for each mutual fund investment which disclosed both the existence and amount of the commissions for each investment. In addition, Respondents maintained that Claimants did receive a commission discount on their bond transactions, as reflected in the lower purchase price paid for these investments. In addition, Respondents maintained that they were under no obligation to offer Claimants a greater commission reduction than the broker granted, particularly when Claimants did not seek such an enhanced reduction, and Respondents made no representations that such additional discounts were even available.

In their Counterclaim, Respondents requested indemnification from the Trustees of the Funds. Respondents alleged that the Trustees, in their fiduciary capacity, were responsible for and made all investment decisions. Respondents alleged that the Trustees were provided a prospectus which described fully the investment and all fees and commissions associated with the investments.

In Answer to the Counterclaim, Claimants maintained that Respondents prevented Claimants from exercising their fiduciary duties with respect to nonmutual fund and mutual fund investments. Claimants maintained that Respondents failed to disclose the excessive commissions on U.S. Government Agency and corporate securities and concealed the excessive nature of commissions from Claimants. In addition, Claimants maintained that Respondents failed to disclose the excessive nature of commissions they received upon the sale of retail B-share mutual fund investments. Overall, Claimants maintained that Respondents failed to provide the necessary information to the Trustees essential for the exercise of their fiduciary duties.

RELIEF REQUESTED

Claimant Health and Welfare Fund requested \$86,913.00 in compensatory damages for the undisclosed excessive markups on fixed income securities and disgorgement of commissions received from the sale of the proprietary mutual funds with DSCs in the amount of \$124,041.00 as well as pre-award interest of \$70,337.00 for the Health and Welfare Fund.

Claimant Supplemental Unemployment Benefit Funds requested \$28,784.00 in compensatory damages for the undisclosed excessive markups in fixed income securities and disgorgement of commissions received from the sale of the unsuitable mutual funds with DSCs in the amount of \$62,885.00 as well as pre-award interest of \$30,565.00 for the Supplemental Unemployment Benefits Fund.

Claimant Pension Fund requested \$155,151.00 in compensatory damages for the undisclosed excessive markups in fixed income penalties and disgorgement of commissions received from the sale of the unsuitable mutual funds with DSCs in the amount of \$79,286.00 as well as pre-award interest of \$78,167.00 for the Pension Fund.

Claimants requested an Order waiving the remaining DSCs which prevent liquidation of mutual fund investments without penalty and loss of principal; reasonable attorney's fees in the amount of \$35,000.00 and of arbitration expenses in the amount of \$15,000.00 and punitive damages.

Respondents requested that the panel reject and dismiss Claimants' claims in their entirety and that Respondents' attorneys' fees and the costs of the arbitration be assessed to Claimant.

In the Counterclaim, Respondents requested that the Trustees be held fully and personally liable for any damages assessed from the Statement of Claim. Therefore, Respondents further requested that if Respondents as Counter-Claimants, who are not named Trustees or fiduciaries of the Benefit Funds, are found to have any responsibility for such harm, that Trustees, as designated fiduciaries and the investment decision-makers for the Benefit Funds, are found liable to Respondents for indemnity and/or contribution.

Claimants requested that the Counterclaim be dismissed in its entirety.

OTHER ISSUES CONSIDERED & 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.

The panel considered Respondents' oral motion in limine to exclude claims or testimony as to the premise that trading done by Respondents was unauthorized and Claimants' response thereto, and granted the motion.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. That the Statement of Claim is denied in its entirety.
2. That the claim for punitive damages is denied.
3. That the Counterclaim is denied.
4. That each party shall bear its own costs and expenses, including attorney's fees, except for the forum fees as discussed below.
5. That any and all relief not specifically addressed herein is denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

11 sessions x \$1,000.00 = \$11,000.00

Forum Fees are assessed at fifty percent to Claimants, joint and several, and at fifty percent to Respondent Dean Witter Reynolds. Claimant is to receive credit for the \$1,000.00 hearing session deposit previously submitted to the NASD Regulation, leaving a net assessment due from Claimants of \$4,500.00. Respondent Dean Witter Reynolds is to receive credit for the \$1,000.00 hearing session

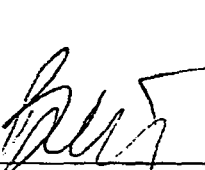
deposit previously submitted to the NASD Regulation, leaving a net assessment of \$4,500.00 due from Respondent Dean Witter Reynolds.

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

DATE

4/21/97

CONCURRING ARBITRATORS' SIGNATURES



Benjamin B. Segel, Chairman
Public Arbitrator

Sydney S. Friedman
Public Arbitrator

THE UNDERSIGNED ARBITRATOR DISSENTS AS TO
DENIAL OF THE STATEMENT OF CLAIM AND AWARD
OF DAMAGES

Dennis W. Zeuszniewski
Industry Arbitrator

Date Decision Served by NASD Regulation:

April 24, 1997

deposit previously submitted to the NASD Regulation, leaving a net assessment of \$4,500.00 due from Respondent Dean Witter Reynolds.

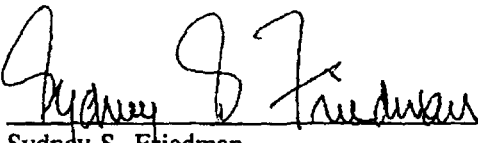
Fees are payable to the National Association of Securities Dealers Regulation, Inc.

DATE

CONCURRING ARBITRATORS' SIGNATURES

Benjamin B. Segel, Chairman
Public Arbitrator

4/18/97


Sydney S. Friedman
Public Arbitrator

**THE UNDERSIGNED ARBITRATOR DISSENTS AS TO
DENIAL OF THE STATEMENT OF CLAIM AND AWARD
OF DAMAGES**

Dennis W. Zeuszniewski
Industry Arbitrator

Date Decision Served by NASD Regulation: April 24, 1997

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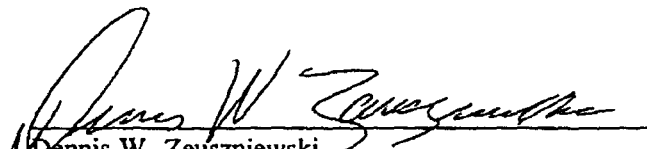
CONCURRING ARBITRATORS' SIGNATURES

Benjamin B. Segel, Chairman
Public Arbitrator

Sydney S. Friedman
Public Arbitrator

**THE UNDERSIGNED ARBITRATOR DISSENTS AS TO
DENIAL OF THE STATEMENT OF CLAIM AND AWARD
OF DAMAGES**

4/17/97



Dennis W. Zeuszniewski
Industry Arbitrator

Date Decision Served by NASD Regulation: April 24, 1997