

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

---

In the Matter of the Arbitration Between

Name of Claimants

Frances J. and Charles D. Smith

93-04191

Name of Respondents

Dean Witter Reynolds, Inc.  
Gregory Reece

---

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on October 12, 1993, Claimants Frances J. and Charles D. Smith, who appeared Pro Se, alleged that during October, 1987, Respondent Gregory Reece, then an employee of Respondent Dean Witter Reynolds, Inc., sold each Claimant 200 shares of Hana Biologics, Inc. stock at \$14.00 per share for a total investment of \$2,800.00 for each Claimant. Claimants further alleged that the shares were purchased for their Independent Retirement Accounts (IRA's). Claimants further alleged that Respondent Gregory Reece had represented to them that Respondent Dean Witter Reynolds, Inc. was promoting the Hana stock because Hana's product for diabetes control was just finishing up testing with the Food and Drug administration for their final approval and would be released for market within a couple of months, that the product was revolutionary and would cause Hana Biologics, Inc.'s stock to raise dramatically; that Mr. Reece was himself a shareholder in Hana and that he was confident in the merits of the stock. Claimants further alleged that they purchased the stock based on Mr. Reece's professional recommendation, but that Hana Biologics, Inc. had no such dramatic product emerge and the price of the stock ultimately dropped to less than \$1.00 per share. The Claimants contended that in March, 1991, after a 1 for 4 reverse stock split, Hana became Somatix Therapy Corporation, and the 50 shares of Somatix now owned by each Claimant was worth, as of July 31, 1993, \$337.50, but Respondent Reece never advised them to sell their shares to avoid the loss, and when they inquired about selling the shares, Mr. Reece advised against it, saying the stock price might rebound in the future. Claimants further alleged that Mr. Reece's recommendation to invest in Hana was unsuitable for their investment needs, and that Respondent Dean Witter Reynolds, Inc. did not show good faith in their dealings with Claimants because they failed to reply to Claimants' phone calls and correspondence related to this matter, and that therefore they should be held liable in this matter.

Respondents Dean Witter Reynolds, Inc. and Gregory Reece, by and through their in-house counsel Annemarie P. McAvoy, Esq., maintained that Respondent Gregory Reece's suggestion that Claimants purchase Hana-Biologics, Inc. stock was suitable for Claimants' objectives, financial status, income, understanding and experience with the stock market. The Respondents further maintained that the investments at issue were thoroughly discussed with the Claimants, were authorized by them, and were effectuated with their knowledge and consent. Respondents Dean Witter Reynolds, Inc. and Gregory Reece further maintained that there was no misrepresentation or omission of material fact, and that they did not act with any intent to defraud Claimants nor did they act with reckless disregard for Claimants, and therefore, should not be held liable in this matter.

### **RELIEF REQUESTED**

Claimants Frances J. and Charles D. Smith requested actual damages in the amount of \$4,925.00, and punitive damages in the amount of \$4,925.00.

Respondents Dean Witter Reynolds, Inc. and Gregory Reece requested that the claims of the Claimants be dismissed in their entirety, and that Respondents be awarded their costs.

### **AWARD**

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Gary M. Landau, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on October 9, 1993 and by the Respondents on January 10, 1994.

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 Claimants Frances J. and Charles D. Smith against Respondents Dean Witter Reynolds, Inc. and Gregory Reece are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc. Respondent Dean Witter Reynolds, Inc. is liable and shall pay \$75.00 to the Claimants, which represents one-half of the filing fee.

AFFIRMATION

I, GARY M. LANDAU, 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.



Signature of Arbitrator

DATE OF DECISION: May 10, 1994

STATEMENT OF ARBITRATOR

NASD CASE # 93-04191

This arbitrator finds no support in the record that there was any willful misrepresentation or bad faith on the part of the broker when the investments at issue were purchased by the claimants (or at any time thereafter.) The broker cannot be a guarantor of success; concomitant with that, is the notion that when one plays the market, one must endure the risks of failure. The broker cannot be held accountable in this instance.

  
\_\_\_\_\_  
GARY M. LANDAU, Esq.  
Arbitrator