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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Helen Czernowski

93-04448

Names of Respondents

Dean Witter Reynolds, Inc.  
Thomas M. Vaughan

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REPRESENTATION

For Claimant, Helen Czernowski ("Czernowski"): Dyanne E. Feinberg, Esq. of Gilbride, Heller & Brown, P.A., Miami, FL.

For Respondents,: Dean Witter Reynolds, Inc. ("DWR") and Thomas M. Vaughan ("Vaughan"): Elizabeth T. Hill, Esq. of D.W.R., New York City, N.Y.

CASE INFORMATION

Statement of Claim filed: October 22, 1993.

Claimant's Submission Agreement signed on: October 15, 1993.

A joint Statement of Answer filed by Respondents, D.W.R. and Vaughan on: December 22, 1993.

Respondent, DWR's Submission Agreement signed on: December 22, 1993 by Richard J. Sheehan on behalf of the firm.

Respondent, Vaughan's Submission Agreement signed on: November 1, 1994.

HEARING INFORMATION

On November 1, 2, and 3, 1994 in Ft. Lauderdale, Florida, a hearing lasting five (5) sessions was conducted.

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### **CASE SUMMARY**

Claimant, alleged that: she is a 70-year old widow, with a high school education and no prior experience in securities; that she opened an account with D.W.R. in 1986; that from 1986 to 1990, she had two account executives who recommended conservative investments which were suitable for her; that in 1990, Respondent, Vaughan, was assigned to her account; that Immediately thereafter, Vaughan recommended the sale of a majority of the conservative investments, and recommended that the proceeds be used to trade equities; that from 1990 to 1993, Vaughan recommended the purchase and sale of securities, many of which were low-priced and speculative; that Vaughan recommended trading the securities on a short term basis and in an excessive manner; that Vaughan did not contact Claimant when he made many of the purchases and sales. Claimant further stated that, In addition, Vaughan recommended unsuitable investments in Claimant's IRA account, including swapping of mutual funds and trading of equity securities.

Respondents alleged that: Claimant's investments were suitable; Claimant invested only 6% of her net worth in stock, an amount which Respondents' experts testified was suitable for a lady of her age and financial background; Claimant presented no expert testimony to the effect that the transactions were unsuitable. Claimant ran no fewer than five small businesses during her life and was sufficiently sophisticated to understand the transactions; Claimant twice elected to continue with her stock investments, despite the advice of her CPA that she was losing money and should stop; Claimant, therefore, waived her claim, ratified the transactions at issue, and failed to mitigate her damages.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in excess of \$35,000.00, pre-judgment interest, and the costs of this action.

Respondents requested dismissal of the Claim in its entirety and that Respondents' costs be assessed against Claimant.

### **AWARD**

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

1. Respondents, D.W.R. and Vaughan, are found not liable and, therefore, all claims against them are hereby dismissed.

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2. Claimants' requests for attorney's fees, costs and expenses, are denied.
3. Respondents' request for costs is denied.

**OTHER COSTS**

The parties shall each bear all costs and expenses incurred by them in connection with this proceeding (including attorney's fees).

**FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount \$2,500.00 (five (5) hearing sessions X \$500.00).

1. Claimant is hereby assessed forum fees in the amount of \$1,000.00 for which the NASD shall retain the \$500.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD by Claimant of \$500.00.
2. Respondents, DWR and Vaughan are hereby assessed \$1,500.00, jointly and severally, payable to the NASD, Inc.
3. The NASD shall retain the non-refundable filing fee of \$150.00 paid by the Claimant.

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

**ARBITRATION PANEL**

Concurring Arbitrators' Signatures

/s/

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Nancy C. Wear, Esq.

Public/Chair

/s/

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Paul E. Morgan

Public/Panelist

/s/

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Andrew Bartfay

Industry/Panelist

Date of Decision: December 12, 1994