

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

**Name of Claimant**

Dean Witter Reynolds Inc.

vs.

Case #  
93-04924

**Name of Respondent**

James Spinner

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**REPRESENTATION**

For Claimant, Dean Witter Reynolds, Inc. ("Claimant"), Mark Mancher, Esq., from the firm of Jackson Lewis Schnitzler Krupman.

For Respondent, James Spinner ("Respondent"), Glenn B. Gruder, Esq., from the firm of Mars, Sloan & Conlon.

**CASE INFORMATION**

Statement of Claim was filed on November 19, 1993.

Claimant's Submission Agreement was signed on November 19, 1994.

Statement of Answer was filed by Respondent on December 10, 1994.

Respondent's Submission Agreement was signed on December 7, 1994.

**HEARING INFORMATION**

Hearing Date/Sessions:      March 6, 1995      -      1 session

Hearing Location: NASD offices, located in New York, New York.

**CASE SUMMARY**

Claimant alleges that on January 30, 1992, Claimant employed Respondent as an Account Executive trainee and the parties entered into a written Employment Agreement whereby Respondent agreed to pay Claimant \$28,000 in the event he terminates his employment with

the Agreement provided that "if the employee is employed by Claimant for more than one year after signing this Agreement, this amount (\$28,000) will be reduced by ten percent of the total gross commissions which have been generated by the employee". In addition, Claimant alleges that Respondent terminated his employment on May 12, 1993 and had generated \$7,425 in total gross commissions, while was employed by Claimant.

Respondent admits that he signed the Employment Agreement with Claimant on January 30, 1992 and that he terminated his employment with Claimant on May 12, 1993. Respondent maintains that while he was employed by Claimant, his supervisors pressured him to sell Claimant's proprietary products. Respondent also maintains that the pressure forced Respondent to choose between violating his fiduciary and professional responsibilities as a broker, and acquiescing to the demands of his employer. Respondent further maintains that he voluntarily terminated his employment with Claimant in order to avoid violating his professional and fiduciary responsibilities as a broker. Respondent asserts that his voluntary termination was justified and, therefore, Claimant may not seek damages against Respondent.

#### **RELIEF REQUESTED**

Claimant requests \$27,257.50 representing \$28,000 less 10% of \$7425 in commissions generated by Respondent. In addition, Claimant requests interest at the legal rate from May 12, 1992, to the date of the arbitration and such other relief that is deemed just and proper.

Respondent requests that all claims against him be dismissed.

#### **OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that the Award in this matter may be executed in counterpart copies and have agreed to receive conformed copies of the Award while the original remain on file with the NASD.

#### **AWARD**

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

1. Respondent is hereby liable and shall pay Claimant **FOUR THOUSAND FIVE HUNDRED DOLLARS AND ZERO CENTS (\$4,500.00)**.
2. The claim for interest is denied.

3. The claims for costs and attorney's fees are denied.
4. Respondent is also liable to Claimant for fees as outlined in the Forum Fees section of this decision.

#### FORUM FEES

Pursuant to Section 44(c) of the *Code of Arbitration Procedure*, the following Forum Fees are assessed.

Non-refundable Filing Fee: \$500.00

Hearing Session Fee: \$600.00 (1 session @ \$600.00 per session)

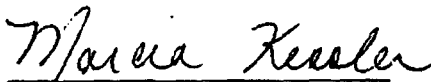
Total Fees: \$1,100.00

1. Claimant is assessed a \$500.00 non-refundable filing fee. Claimant is further assessed \$300.00 in hearing session fees. Claimant is entitled to a refund of \$300.00.
2. Respondent is assessed \$300.00 in hearing session fees and shall satisfy this assessment by reimbursing Claimant \$300.00.

#### ARBITRATION PANEL

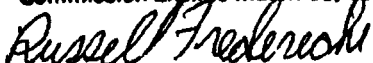
Marcia Kessler, Esq.	-	Industry Chairperson
Thomas E. Siegler	-	Industry Panelist
Mark R. Greenberg	-	Industry Panelist

Concurring Arbitrator's Signature



Marcia Kessler, Esq.

**RUSSELL FREDERICKS**  
Notary Public, State of New York  
No. 31-4820739  
Qualified in New York County  
Commission Expires March 30, 1996



Date of Decision: April 25, 1995

3. The claims for costs and attorney's fees are denied.
4. Respondent is also liable to Claimant for fees as outlined in the Forum Fees section of this decision.

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#### **ARBITRATION PANEL**

Marcia Kessler, Esq.	-	Industry Chairperson
Thomas E. Siegler	-	Industry Panelist
Mark R. Greenberg	-	Industry Panelist

Concurring Arbitrator's Signature

  
Thomas E. Siegler

Date of Decision: ~~April 25, 1995~~

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#### ARBITRATION PANEL

Marcia Kessler, Esq.	-	Industry Chairperson
Thomas E. Siegler	-	Industry Panelist
Mark R. Greenberg	-	Industry Panelist

Concurring Arbitrator's Signature

  
Mark R. Greenberg

Date of Decision: April 25, 1995

STATE OF *New York* s.s.:  
COUNTY OF *Richmond*


On this *10<sup>th</sup>* day of April, 1995, before me personally appeared Thomas E. Siegler, known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that ~~she~~ executed the same.

*Gail E. Plaginos*

GAIL E. PLAGINOS  
Notary Public, State of New York  
No. 43-177023  
Qualified in Richmond County  
Commission Expires March 30, 1997

STATE OF New York s.s.:  
COUNTY OF New York

On this 10<sup>th</sup> day of April, 1995, before me personally appeared Mark R. Greenberg, known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that she executed the same.

  
KELLY BURKE  
Notary Public, State of New York  
No. 52-4915821  
Qualified in Suffolk County  
Commission Expires December 21, 1995

STATE OF *New York* S.S.:  
COUNTY OF *New York*

On this *19<sup>th</sup>* day of April, 1995, before me personally appeared Marcia Kessler, known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that she executed the same.

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RUSSELL FREDERICKS  
Notary Public, State of New York  
No. 31-4820739  
Qualified in New York County  
Commission Expires March 30, 1996

*Russell Fredericks*