

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Herta Eisenstadter

93-04953

Name of Respondents

Dean Witter Reynolds, Inc.
Samuel Brandwein

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on November 29, 1993, Claimant Herta Eisenstadter, who appeared Pro Se, alleged that Respondent Samuel Brandwein ("Brandwein"), a broker at Respondent Dean Witter Reynolds, Inc. ("Dean Witter"), persuaded her to open an account with Respondents. Claimant further alleged that Respondent Brandwein advised her to invest \$12,000.00 in the Dean Witter Realty Yield Plus II Limited Partnership ("Realty Plus L.P.") and \$4,000.00 in the Dean Witter Realty Income Partnership 4 Limited Partnership ("Realty Income L.P."). Claimant further alleged that in June, 1993 her investment in Realty Plus L.P. and Realty Income L.P. had dropped from \$12,500.00 to \$7,620.00. Claimant contended that Respondents never disclosed to her the risk of losing principal or the fact that the shares could not be sold. Claimant further contended that these investments were made in her retirement account. Claimant alleged that Respondent Dean Witter failed to supervise Respondent Brandwein. In her response to Respondents' Statement of Answer, Claimant further alleged that the investments in question constituted 28.5% of her total initial investment with Respondents. As a result of the above, Claimant contended that she has suffered damages for which the Respondents should be held liable.

Respondents Dean Witter Reynolds, Inc. and Samuel Brandwein, through Respondent Dean Witter's in-house counsel Edward W. Larkin, Esq., New York, New York, maintained that when Claimant made the investments in question, real

estate was widely regarded as a prudent investment to offset inflation. Respondents further maintained that the real estate investments purchased by Claimant were only a portion of a diversified portfolio, which included stocks, mutual funds, certificates of deposit and government backed securities. Respondents contended that prior to recommending any investments to Claimant, Respondent Brandwein reviewed with Claimant her goals and objectives, and that the investments in question were consistent with Claimant's goals and objectives. Respondents further contended that the investments in question were fully described to Claimant prior to her decision to invest, and that Claimant was specifically made aware that these investments were illiquid. As a result of the above, Respondents maintained that they should not be held liable in this matter.

RELIEF REQUESTED

Claimant Herta Eisenstadter requested \$10,000.00 in actual damages.

Respondents Dean Witter Reynolds, Inc. and Samuel Brandwein requested that the Claimant's Statement of Claim be dismissed in its entirety, and that costs be assessed against the Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents Dean Witter Reynolds, Inc. and Samuel Brandwein's request for a hearing was considered by the arbitrator and was denied.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single public arbitrator, David Fogel, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on November 22, 1993 and not by Respondents as required by Sections 12 and 13 of the NASD Code of Arbitration Procedure.

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 Claimant Herta Eisenstadter against Respondents Dean Witter Reynolds, Inc. and Samuel Brandwein are dismissed in their entirety.
2. The parties shall bear their respective costs.

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3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc.

AFFIRMATION

I, DAVID FOGEL, ESQ., do hereby affirm upon my oath of 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: September 21, 1994

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STATE OF: NY

SS:

COUNTY OF: NY

On this 14 day of September, 1994, before me personally appeared **DAVID FOGEL, ESQ.** to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Deborah A. DeJesus

DEBORAH A. DEJESUS
Notary Public, State of New York
No. 02DE5022979
Qualified in New York County
Commission Expires January 24, 1996