

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

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

**Name of Claimant**

Hortense Nicholson

93-05145

**Name of Respondent**

Dean Witter Reynolds Inc.  
George Knight

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**REPRESENTATION**

For Claimant Hortense Nicholson ("Claimant") appeared John J. Sheehy, Esq. of the law firm Sheehy & Sheehy, Jersey City, New Jersey.

For Respondents Dean Witter Reynolds, Inc. ("Dean Witter") and George Knight ("Knight") appeared Theodore A. Kresbach, Esq. of the law firm Kittay, Gold & Kresbach, White Plains, New York.

**CASE INFORMATION**

The Statement of Claim was filed on December 14, 1993. The Claimant's Submission Agreement was executed on December 8, 1993.

Respondents Dean Witter and Knight filed a joint Statement of Answer on April 26, 1994. A Submission Agreement was executed on Dean Witter's behalf on April 26, 1994. Respondent Knight executed a Submission Agreement on April 25, 1994.

**HEARING INFORMATION**

Hearing Dates/ Sessions:	April 24, 1995	-	Two Sessions
	April 25, 1995	-	Two Sessions

**CASE SUMMARY**

Claimant Hortense Nicholson alleged that she was a long time customer of respondent Dean Witter Reynolds, Inc.; that her account was serviced by respondent George Knight as agent and

employee of respondent Dean Witter; and that she entrusted funds worth over \$192,000.00 to the respondents in 1983.

Claimant further alleged that respondents stood in the position of fiduciaries with respect to her account; that respondents failed to exercise the standard of care required of a fiduciary by negligently recommending stocks and limited partnerships of poor quality not suitable to an investor of her advanced age; and that such negligent performance of respondents' fiduciary duties resulted in a substantial loss of her principal investments, diminution in yearly income, and deprivation of the benefits of a rising stock market from 1983 until the present.

Respondents maintained that claimant incorrectly referred to them as fiduciaries with respect to her account; that claimant does not allege any claim of unauthorized trading, fraud, deceit, or misrepresentation; and that claimant's allegations of losses due to negligence are really claims that respondents did not make her account as profitable as claimant believes it could have been.

Respondents further maintained that throughout the life of the account, claimant made increasing demands for greater income from the account; that Respondent Knight made recommendations suited to claimant's desire for increased income; that claimant made the final decisions whether to accept or reject these recommendation; and that, at times, Claimant offered her own investment ideas. Thus, Respondents asserted that any duties owed to Claimant were fully and faithfully carried out. Additionally, Respondents maintained that there can be no recovery for punitive damages under New York Law.

#### **RELIEF REQUESTED**

Claimant requested an award against respondents, jointly and severally as follows:

1. Loss of Principal - over \$115,000.00;
2. Loss of Income - over \$87,000.00;
3. Loss of capital appreciation - \$100,000.00;
4. Punitive damages in the amount of \$450,000.00;
5. Costs;
6. Attorney's fees; and
7. Such relief as the panel deems just and proper.

Respondents requested that the panel find in respondent's favor, dismissing all of the Claimant's claims.

### **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.

### **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 are hereby jointly and severally liable and shall pay to the claimant the sum of \$19,500.00, inclusive of interest.
2. All claims for punitive damages be and hereby are dismissed.
3. Each party shall bear their respective costs, including attorneys fees.
4. All other claims be and hereby are denied.

### **FORUM FEES**

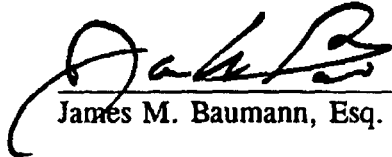
Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed:

4 sessions X \$1000.00 = \$4,000.00 minus hearing session deposit of \$1,000.00 = \$3,000.00 due.

Respondent Dean Witter Reynolds, Inc. be and hereby is liable and shall pay to the NASD the sum of \$3000.00.

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

Concurring Arbitrators' Signatures  
Name

  
James M. Baumann, Esq.

Public Arbitrator

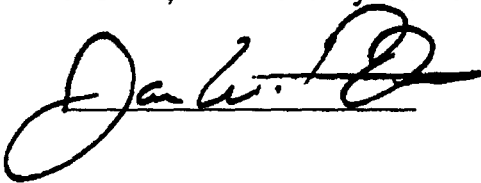
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Walter A. Kapuscinski

Industry Arbitrator

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John R. Mitchell

Public Arbitrator

I, James M. Baumann, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.

  
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Date of Decision: July 18, 1995

**Concurring Arbitrators' Signatures  
Name**

James M. Baumgard, Esq.

**Public Arbitrator**

Walter A. Kapuscinski

**Industry Arbitrator**

John R. Mitchell

**Public Arbitrator**

I, Walter Kapuscinski, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.

[Signature]

Executed on

Date of Decision: 7/14/95

Date of Decision: July 18, 1995

Concurring Arbitrators' Signatures  
Name

James M. Baumann, Esq.

Public Arbitrator

Walter A. Kapuscinski

Industry Arbitrator

John R. Mitchell  
John R. Mitchell

Public Arbitrator

I, John R. Mitchell, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.

John R. Mitchell

Executed on:

Date of Decision: 2-14-95

Date of Decision: July 18, 1995