

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

John Denes

93-05224

Name of Respondents

Dean Witter Reynolds, Inc.;  
James F. Mooney

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**REPRESENTATION**

For Claimant: John Denes ("Denes") was represented by James Schuster, Esq. of Southfield, Michigan.

For Respondents: Dean Witter Reynolds, Inc. ("Dean Witter") and James F. Mooney ("Mooney") were represented by Mark R. Werder, Esq. of Honigman Miller Schwartz & Cohn, Located in Detroit, Michigan.

**CASE INFORMATION**

Statement of Claim filed: December 20, 1993.

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

Statement of Answer filed by Respondents on: April 22, 1994.

Respondent Dean Witter's Submission Agreement signed on: March 15, 1994 by Richard A. Rogoff, First Vice President and Assistant General Counsel, Dean Witter Reynolds, Inc.

Respondent Mooney's Submissions Agreement signed on: March 24, 1994.

### **HEARING INFORMATION**

Pre-Hearing Conference: None Held.  
Hearing Dates/Sessions: November 17, 1994 for Two (2) sessions;  
November 18, 1994 for Two (2) sessions.  
  
Hearing Location: Southfield, Michigan.

### **CASE SUMMARY**

Claimant Denes alleged that Respondents engaged in discriminatory and slanderous conduct in terminating his employment. Denes specifically alleged that:

1. Denes began working at Dean Witter as an account executive on or about June 15, 1989;
2. On or about December 14, 1990, Denes obtained the a client's permission to purchase stock and an option for the client, relying upon the opening projections provided by Dean Witter research. Both the stock and option were purchased at an opening price higher then the projected prices. The client complained to Denes' superior that he had approved the purchase, but not the price. He added that it was an innocent mistake and that Denes should not be dealt with harshly;
3. Denes was unaware that he did not have the client's permission to buy at the opening price. Denes' client was reimbursed and Denes received no commission;
4. Denes was terminated December 17, 1990 for the reported reason of unauthorized trading, when in fact he was fired because Dean Witter had an unwritten policy and practice of firing brokers who the managers (here Mooney) arbitrarily determined did not produce sufficient income. The conduct for which Denes was fired would not have served as cause to dismiss and file a Form U-5 for other Dean Witter employees;
5. Dean Witter and Mooney terminated Denes because his father-in-law contacted Mooney regarding Denes' upcoming divorce and was due to unlawful, discrimination based upon Claimant's marital status;
6. Dean Witter and Mooney stated false information on his original Form U-5;

7. Dean Witter and Mooney provided clients and prospective employers with false and defamatory information regarding his termination, damaging his professional reputation and making it impossible for him to find a comparable position within the industry;

8. Dean Witter and Mooney unlawfully discriminated against Denes by terminating him as a result of his filing bankruptcy in July of 1990; and

9. Dean Witter and Mooney breached their duty by created a work environment where Denes felt compelled to take the actions he did in order to produce according to the Respondents' demands and by terminating Denes without cause in order to acquire his accounts.

Based upon the above allegations, Denes asserted claims for violation of the Elliott-Larsen Civil Rights Act, MCLA 37.2101, et seq. because of the unlawful discrimination based on Denes' marital status; for defamation and libel because of the false statements on the Form U-5; for defamation and slander because of the false statements communicated to clients and potential employers; for violation of Section 525(b) of the Bankruptcy Act, 11 USC 525(b) by discriminating against him because of his filing bankruptcy; and for violation of their duty of good faith and fair dealing.

Respondents denied the material allegations of the Statement of Claim, alleging that:

1. Denes was fired for unauthorized trading, conduct which violates clear compliance standards and rules in a highly regulated industry. The particular unauthorized trading episode for which Denes was fired was not isolated, but was a pattern of other prior and subsequent instances of similar misconduct involving this and another customer;

2. While earlier communications with former spouses and in-laws did not enhance Denes reputation, these events did not result in Denes' termination for unauthorized trading. In addition, this statutory cause of action was not brought within the limited time frame permitted by the statute;

3. Dean Witter's statement on the Form U-5 and the statements made to third parties were true, and truth is an absolute defense to libel and slander. The claims for libel and slander are outside the statute of limitations and a good faith privilege exists for the statements Dean Witter was required to make to regulatory authorities to protect the public;

4. Denes was not terminated for his financial condition, but because of his improper conduct. Furthermore, the bankruptcy provision relied on has been

interpreted by the Supreme Court to only apply where the termination is solely based on bankruptcy; and

5. Denes' "good Faith/fair dealing" theory is insupportable under Michigan law, where the courts have expressly held that Michigan does not recognize this theory as a legal cause of action.

### **RELIEF REQUESTED**

Claimant requested entry of an award against Respondents for actual damages totaling \$430,243.00 representing draw wages, commissions, medical benefits, increased commissions at a 30% rate, interest at 2% above prime, and inflation at 4%; for damages for discrimination and defamation, including losses incurred in seeking substitute employment, loss of earnings, deferred compensation and other employment benefits; for compensatory damages for losses resulting from humiliation, mental anguish, emotional distress and loss of professional reputation; for punitive damages according to the proof; for severance pay that he should have received upon termination; for an Order permanently enjoining Respondents and their agents, successors and employees from engaging in the unlawful practices complained of and to cause a corrected Form U-5 to be issued; for costs including reasonable attorneys' fees; and for such other relief as the Panel deemed proper.

Respondents requested that the arbitration panel find in their favor and against Denes, issue an award finding that Claimant had no cause of action, and award Respondents forum fees and attorneys' fees to the full extent authorized by Michigan law for defense of a frivolous lawsuit.

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

At hearing, the Respondent moved to dismiss Count II (for defamation and libel) and Count III (for defamation and slander) on the basis of the statute of limitations. Upon review of the motion and all responses, the Panel determined that the Motion was denied.

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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Dean Witter Reynolds, Inc. is hereby ordered to prepare and file with the NASD a further amended Form U-5 for Claimant John Denes substantially the same as the Form U-5 dated June 12, 1991, except that the answer to Item 7 shall read as follows:

"The employee and the employer agreed to terminate their association because of differences in operational philosophy."

2. Respondents Dean Witter Reynolds, Inc. and James F. Mooney are jointly and severally liable for and shall pay to the Claimant, John Denes, the sum of \$7,500.00 as attorneys' fees. In determining to award attorneys' fees to the Claimant, the Panel reviewed the arguments of the parties and the briefs submitted by the parties, and determined that authority existed for an award of attorneys' fees to Claimant, John Denes;

3. All remaining costs of arbitration shall be borne by the party incurring the cost, except for those specifically enumerated herein;

4. All remaining requests for damages are dismissed with prejudice and denied in their entirety; and

5. Any relief requests not specifically granted are hereby denied.

### **FORUM FEES**

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Four (4) hearing sessions x \$750.00 per session = \$3,000.00.

The National Association of Securities Dealers, Inc. shall retain the \$500.00 claim filing fee and refund the \$750.00 claim filing fee previously filed by the Claimant, John Denes. Respondents Dean Witter Reynolds, Inc. and James F. Mooney are jointly and severally liable for and shall

pay to Claimant, John Denes, the sum of \$500.00 as reimbursement of the claim filing fee. In addition, Respondents Dean Witter Reynolds, Inc. and James F. Mooney are jointly and severally liable for and shall pay to the NASD the sum of \$3,000.00 as forum fees.

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

Concurring Arbitrators' Signatures

Name:

Date Signed:

/s/ George P. Doom  
George P. Doom  
Public Arbitrator

February 23, 1995

/s/ Frank G. Bank  
Frank G. Bank  
Industry Arbitrator

February 24, 1995

Dissenting Arbitrator's Signature

Arbitrator Norman Bristol does not concur in the order amending the Form U-5, the award of attorneys' fees to the Claimant, John Denes, and the assessment of forum fees against the Respondents.

Name

Date Signed

/s/ Norman Bristol, Esq.  
Norman Bristol, Esq.  
Public Arbitrator  
Chairperson

February 23, 1995

For NASD Use Only

Date of Service of Award: March 3, 1995