

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Arlene McElhany

93-05320

Name of Respondents

Dean Witter Reynolds Inc.
Richard F. Montgomery

REPRESENTATION

For Claimant: Peter B. Skeel, Esquire and Swensen, Peter & Johnson.

For Respondents: Dean Witter Reynolds, Inc. ("DW") and Richard Montgomery ("Montgomery") Jack B. Cobetto, Esquire and Reed, Smith & McClay.

CASE INFORMATION

Statement of Claim filed: December 21, 1993.

Claimant's Submission Agreement signed on: December 14, 1993.

Statement of Answer filed by Respondents on: March 10, 1994.

Respondent, Dean Witter's Submission Agreement signed on: March 9, 1994.

Respondent, Montgomery's Submission Agreement signed on: March 10, 1994.

HEARING INFORMATION

Hearing Date/Sessions: November 29, 1994 - 2 Sessions

Hearing Location: Westin William Penn, 530 William Penn Place, Pittsburgh, PA

CASE SUMMARY

Claimant, Arlene McElhany, age 52 and a widow, received approximately \$90,000 from her husband's pension plan and life insurance on his death in 1984. Claimant explained she had only an 11th grade education and obtained a job as a kitchen helper after her husband died. She stated she had no investment experience prior to investing \$40,000 in Washington Mutual Fund, a common stock fund, which she purchased from a life insurance salesman.

In late 1986, Claimant stated she made an appointment at the South hills Village office of Respondent, DW, when she became concerned that her money was not properly invested. Claimant maintained she had been withdrawing \$500 a month from the mutual fund in order to meet her living expenses. She was in need of approximately \$800 a month of income from investments.

Claimant alleged that she met with respondent Richard Montgomery, a broker at Dean Witter who had only been a broker since January of 1986 and had completed his training in May. Claimant had \$90,000 to invest including \$40,000 in the Washington Fund. She alleged Montgomery advised against investing in the Washington Mutual Fund, since the income that was generated was less than the Claimant needed. She stated she was told that she could not count on the fund continuing to increase in value at the same rate and over time she would risk depleting her principal. Montgomery, explained Claimant, recommended that she invest in income producing investments.

Claimant opened an account with Dean Witter in the amount of \$90,000 on January 6, 1987, which was invested as follows:

\$50,000	Putnam High Income Government Trust
\$15,000	Dean Witter High yield Securities
\$10,000	Kemper Investment Portfolio Income
\$10,000	Century Pension Income Fund (Fox Capital Corporation)
\$ 3,000	Duff & Phelps Selected Utilities

Claimant maintained that Montgomery stated he explained to Claimant the investments recommended and gave Claimant the prospectuses. She said Montgomery, however, failed to read the prospectus of Century Pension Income Fund (Century), was unaware that six of 12 prior Century Funds were experiencing difficulties and failed to check on Century with any other Dean Witter brokers. Since Century owned no property, had made no mortgage loans and was only in the initial offering stage in January 1987, it would have been a considerable time before any income would have been generated, which did not meet Claimant's objective of immediate income needs. Claimant believed it was a very speculative investment and not suitable for her.

Between 1987 and 1991 the principal value of Claimant's investment portfolio declined from \$88,009 to \$54,272 when Claimant closed her account. (Some investments had been sold previously.) Claimant also claimed \$14,990 for loss of opportunity.

Claimant contends that the Respondents violated their fiduciary duties, failed to provide prudent investment advice, failed to properly supervise Claimant's account and violated Claimant's investment objectives.

The Respondents contend that there is no factual or legal basis for the damages claimed. Respondents explained Montgomery's representations about Washington Mutual to Claimant were appropriate and correct based upon the info she provided him. Respondents stated Montgomery fully explained to claimant the nature of the risks involved in the investments he was suggesting, as well as provided her with prospectuses. Respondents defended the investment advice as suitable for Claimant and that the decline in value, while not the desired goal, was not due to any wrongdoing on the part of Respondents. They also stated that the "out-of-pocket" loss to Claimant was about \$1,000.00 and that Claimant was aware of the normal potential for such loss.

RELIEF REQUESTED

Claimant Arlene McElhany requested the sum of \$48,727 plus interest in damages, as well as costs, attorney's fees and punitive damages.

Respondent requested that all claims be dismissed.

AWARD

After considering the pleadings and the testimony of witnesses at the evidentiary hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Dean Witter, is liable to Claimant in the amount of **TEN THOUSAND DOLLARS AND ZERO CENTS (10,000.00)**.
2. Each party shall bear his/her own costs.
3. The request for punitive damages is denied.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.


Non-refundable Filing Fee	\$ 200.00
Hearing Session Deposit (2 Sessions x \$750.00)	<u>\$1500.00</u>
Total Fees:	<u>\$1700.00</u>

1. Claimant Paid \$950.00.
2. Respondent owes \$750.00 to the NASD, and \$950.00 payable directly to Claimant.

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

Concurring Arbitrator's Signature
Name

Public/Industry


Paul R. Meese


Industry

NASD Date of Decision February 1, 1995

Concurring Arbitrator's Signature
Name

Public/Industry

Andrew R. Weil
Andrew L. Weil, Esq.
Andrew R. Weil

Date of Decision: 11-29-94
NASD DATE OF DECISION FEBRUARY 1, 1995

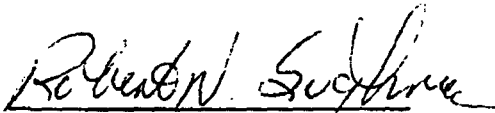
STATE OF California
COUNTY OF Monterey

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 30 DAY OF Jan 1995
Susan M. Annun
NOTARY PUBLIC



Concurring Arbitrator's Signature
Name

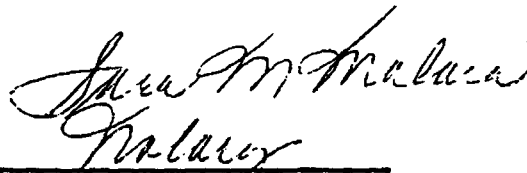
Public/Industry


Robert N. Sughrue

Public

NASD Date of Decision February 1, 1995

Sworn to and subscribed before me on this 30th day of January, 1995.



Notarial Seal
Sara M. Malara, Notary Public
Pittsburgh, Allegheny County
My Commission Expires Sept. 12, 1998

Member, Pennsylvania Association of Notaries