

**NASD AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

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In the Matter of the Arbitration Between

Paul W. Slone, Ercell H. Slone, Triangle  
Auto Sales, Inc., a New Mexico corporation,  
Triangle Auto Sales, Inc. Money Purchase  
Pension Plan, Triangle Auto Sales, Inc.,  
Profit Sharing Plan and Paula Romero,  
custodian for Kristina M. Romero, a minor.      Claimants

and

No. 94-00219

Dean Witter Reynolds, Inc.,

Respondent

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**REPRESENTATION OF PARTIES**

Claimants, Paul W. Slone, Ercell H. Slone, Triangle Auto Sales, Inc., a New Mexico corporation, Triangle Auto Sales, Inc. Money Purchase Pension Plan, Triangle Auto Sales, Inc. Profit Sharing Plan and Paula Romero, custodian for Kristina M. Romero, a minor, were represented by John S. Campbell, Esq. and Kevin M. Sexton, Esq. of J.S. Campbell, P.A., Albuquerque, NM.

Respondent, Dean Witter Reynolds, Inc., was represented by Curt H. Mueller, Esq., Deputy General Counsel at Dean Witter Reynolds, Inc., San Francisco, CA.

**CASE INFORMATION**

The Statement of Claim was filed on or about January 10, 1994. Claimant, Paul W. Slone, executed a Submission Agreement on January 17, 1994. Claimant, Ercell H. Slone, executed a Submission Agreement on January 17, 1994. Claimant, Triangle Auto Sales, Inc., a New Mexico corporation, submitted a Submission Agreement signed by Paul W. Slone, President, on January 17, 1994. Claimants, Triangle Auto Sales, Inc. Money Purchase Pension Plan and Profit Sharing Plan, submitted a Submission Agreement signed by Ercell Slone, Trustee, on March 9, 1994. Claimant, Paula Romero, custodian for Kristina M. Romero, a minor, submitted a Submission Agreement signed by Paula Romero, custodian, on March 9, 1994. Claimants filed a letter clarifying the claim dated June 7, 1994.

The Statement of Answer was filed by the Respondent, Dean Witter Reynolds, Inc. on or about May 11, 1994. Respondent, Dean Witter Reynolds, Inc. submitted a Submission Agreement signed by Curt H. Mueller, Esq. on May 11, 1994.

HEARING INFORMATION

The hearing was held on January 31, 1995 and on February 1, 1995 in Albuquerque, New Mexico for a total of three (3) hearing sessions.

CASE SUMMARY

Claimants, Paul W. Slone ("Slone"), Ercell H. Slone, Triangle Auto Sales, Inc., a New Mexico corporation, Triangle Auto Sales, Inc. Money Purchase Pension Plan, Triangle Auto Sales, Inc. Profit Sharing Olein and Paula Romero, custodian for Kristina M. Romero, a minor ("Claimants"), alleged that the Respondent, Dean Witter Reynolds, Inc. ("Dean Witter"), by and through its agent Dennis J. Malouf ("Malouf"), made fraudulent representations to the Claimants in order to induce them to move their accounts to Dean Witter and to make commissions. In 1985, the Slones became concerned about maximizing their retirement funds and were referred to Malouf. As alleged, the Slones told Malouf that they wanted a higher return than money market rates and were interested in security of investment and needed liquidity for retirement, while Malouf informed the Slones that he would be able to recommend safe, secure and liquid investments. Allegedly, based on his representations, the Slones transferred their joint account, the Triangle Auto Sales Money Purchase Pension Plan and Profit Sharing Plan ("the Triangle Plans") and their individual retirement accounts; in addition, Paula Romero transferred their granddaughter, Kristina M. Romero's custodial account to Dean Witter. The Claimants contended that, when they invested in several real estate limited partnerships based on Malouf's recommendations, Dean Witter breached its fiduciary duty and was negligent for not disclosing to them that limited partnership investments were risky, not liquid and unsuitable. The Claimants made further allegations against Dean Witter including, but, not limited to, negligent representation, violations of ERISA and violations of New Mexico Unfair Practices Act.

In its Answer, Respondent Dean Witter Reynolds, Inc. denied the allegations set forth in the Statement of Claim. Dean Witter contended that the Slones were wealthy business people who understood the nature and risks of the investments and had their own substantial holdings in commercial real estate. The Respondent asserted several affirmative defenses including, but, not limited to, Statutes of Limitations, Ratification, Waiver, Laches, any losses resulted from market price fluctuations beyond the control and responsibility of Dean Witter, the nature and risks of the investments were fully explained to the Slones, and they voluntarily and willingly assumed the risks of their investments.

**RELIEF REQUESTED**

Claimant requested an award in the amount of approximately \$150,000.00 in actual damages plus treble damages, punitive damages, attorneys' fees and costs.

Respondent requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

**OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains on file with the NASD.

**AWARD**

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

1. The claims of the Claimants, Paul W. Slone, Ercell H. Slone, Triangle Auto Sales, Inc., a New Mexico corporation, Triangle Auto Sales, Inc. Money Purchase Pension Plan, Triangle Auto Sales, Inc. Profit Sharing Plan, and Paula Romero, custodian for Kristina M. Romero, a minor, against Respondent Dean Witter Reynolds, Inc. are dismissed with prejudice and denied in their entirety;
2. The claim for punitive damages is hereby dismissed and denied in its entirety; and
3. The parties shall bear their respective costs, including attorneys' fees, except those enumerated herein.

**FORUM FEES**

Forum fees are calculated at the rate of \$750.00 per hearing session. There were three (3) sessions at \$750.00 each equaling \$2,250.00 in forum fees. Pursuant to §43(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Forum fees are assessed in the amount of \$1,125.00 against the Claimants and in the amount of \$1,125.00 against the Respondent. Pursuant to §43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall

**retain** the non-refundable filing fee in the sum of \$200.00 and shall **retain** as forum fees the hearing session deposit in the sum of \$750.00 previously deposited with the NASD by the Claimants. Claimants shall pay to the NASD the amount of \$375.00 for the balance owed for forum fees. Respondent shall pay to the NASD the amount of \$1,125.00 for forum fees.

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

Dated:

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Thomas Smidt, II, Esq.  
Public Arbitrator, Presiding Chair

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Donald W. Hurst  
Public Arbitrator

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John E. Bundock  
Industry Arbitrator

DATED:  
3/7/95