

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

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

In the matter of the Arbitration Between

**Name of Claimant**

Dean Witter Reynolds, Inc.

NASD Arbitration  
No.94-00672

**Name of Respondent**

Daniel C. Corby, Jr.

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**REPRESENTATION**

For Claimant: David P. Restaino, Esq., Dean Witter Reynolds, Inc., San Francisco, California

For Respondent: Richard P. Lentini, Esq., Ryan Swanson & Cleveland, Seattle, Washington

**CASE INFORMATION**

Statement of Claim filed: February 22, 1994

Claimant's Submission Agreement signed: February 11, 1994

Statement of Answer & Counterclaim filed: February 6, 1995

Respondent's Submission Agreement signed: April 20, 1994

Reply to Counterclaim filed: March 6, 1995

**HEARING INFORMATION**

The evidentiary hearing was held in Seattle, Washington, as follows:

June 14, 1995	-	2 sessions
June 15, 1995	-	1 session

### **CASE SUMMARY**

Claimant alleged Respondent breached the terms of a promissory note dated June 27, 1990, by failing to pay the outstanding balance upon demand after leaving Claimant's employ.

Respondent denied liability under the promissory note, asserting that Claimant's breach of its employment contract with him rendered him incapable of fulfilling the obligations of the promissory note. Respondent asserted a counterclaim alleging breach of contract and misrepresentation with respect to the terms and conditions of the employment relationship.

Claimant denied the claims raised in the counterclaim, and asserted such claims were barred by, among other things, applicable statutes of limitations.

### **RELIEF REQUESTED**

Claimant requested damages on the note in the principal amount of \$161, 134.60, plus interest of \$57,516.91 (as of 2/15/94) interest until date of payment and attorney's fees and costs of collection as set forth in the third paragraph of the promissory note. Claimant also requested dismissal of the counterclaim.

Respondent requested dismissal of Claimant's claim. Respondent requested damages on the counterclaim in an amount to be determined, plus punitive damages, costs of arbitration and attorney's fees.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The parties have agreed that the Award in this matter may be executed in either 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 the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Corby is liable for and shall pay to Claimant the outstanding principal on the promissory note in the amount of \$161,134.60. Respondent is not liable for any interest on this amount until 6/15/1995, at which time interest will accrue at 8.4% per annum. Payment of all principal and interest shall be due no later than 6/15/1996.

2. Respondent Corby is liable for and shall pay to Claimant costs and attorney's fees pursuant to the terms of the promissory note in the amount of \$5,000.00, payable within thirty (30) days from the date of this award.

3. The counterclaim is dismissed in its entirety.

#### **FORUM FEES**

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the NASD shall retain the \$500 non-refundable filing fee paid by Claimant and the \$250 non-refundable filing fee paid by Respondent. The NASD shall refund the \$750 hearing session deposit paid by Claimant.

Respondent is assessed all forum fees:

3 sessions @ \$750 / session	=	\$2,250.00
<u>Outstanding postponement fee</u>	=	<u>\$750.00</u>
		\$3,000.00
<u>Credit for payment:</u>	=	<u>\$250.00</u>
Balance due	=	<u><b>\$2,750.00</b></u>

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

#### **ARBITRATORS**

<u>Name</u>	<u>Public / Industry</u>
Mark D. Roth	Industry Chairperson
Frank A. Pritchard, Jr	Industry Panelist
Robert E. Mason	Industry Panelist

Concurring Arbitrators' Signatures

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Served 7/19/1995