

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

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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**In the Matter of the Arbitration Between**

**Name of Claimant**

**Theodore S. Duncan, IRA**

**94-01016**

**Name of Respondents**

**Dean Witter and Gerald Weiner**

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**Representation of Parties**

**Claimant, Theodore S. Duncan ("Claimant") was represented at the hearing Pro Se.**

**Respondents, Dean Witter and Gerald Weiner (collectively, "Respondents") were represented at the hearing by David P. Restaino, Esq. of Dean Witter Reynolds, Inc., San Francisco, California.**

**Case Information**

**Claimant's Statement of Claim was filed on March 11, 1994. Claimant's Submission Agreement was signed on March 8, 1994.**

**Respondents Joint Statement of Answer was filed on May 12, 1994. Respondent, Dean Witter's Submission Agreement was signed on May 12, 1994. Respondent Gerald Weiner's Submission Agreement was signed on January 11, 1995.**

**Hearing Information**

**The hearing was held on January 12, 1995 for two (2) sessions and on January 13, 1995 for two sessions in Chicago, Illinois for a total of four (4) hearing sessions.**

**Case Summary**

**Claimant alleged in his Statement of Claim as Count I that Dean Witter recommended and purchased investments which were not suitable. Claimant alleged that Weiner invested \$57,000 of his IRA in real estate partnerships which were inappropriate. Claimant alleged as Count II that he lost 195 shares of Dean Witter Discover from a spinoff from Sears because of an error on Weiner's part, and Dean Witter refused to reimburse him for the loss of \$7203.**

Respondents stated in their Statement of Answer that the purchase of the real estate limited partnership was suitable. Respondents also stated that almost seven years after first purchasing the real estate investment, claimant contends that it was unsuitable. Respondents also stated that claimant suffered no loss as a result of the Sears stock since the miscommunication was rectified and resulted in no loss to claimant.

#### **Relief Requested**

Claimant requested that Dean Witter be ordered to buy back the real estate limited partnerships for the original purchase price of \$57,000, plus \$7203 for the loss of 195 shares of Dean Witter Discover, \$7000 for the loss of opportunity in alternate investments, interest at 7%, and \$520 in consultation fees, \$650 in arbitration filing costs, and \$127 in miscellaneous expenses.

Respondents requested that the claim be denied in its entirety and that no damages be awarded.

#### **Other Issues Considered and Decided**

Respondents filed a Motion To Dismiss the claim pursuant to Section 15 of the NASD Code of Arbitration Procedure. After receiving claimant's response thereto, the Director denied the motion in part and granted the motion in part.

- The parties present at the hearing have agreed that the Award in this matter may be executed by 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 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. Claimant's First Count set forth in his Statement of Claim is dismissed with prejudice. The panel finds that the investments in real estate partnerships were suitable for Claimant, and that no fraud or misrepresentation occurred;
2. Claimant's Second Count set forth in his Statement of Claim is dismissed with prejudice. The panel finds that while an error did occur, the error was suitably corrected, Claimant suffered no loss and claimant did not prove that he would not have sold the Sears stock if the error had not occurred;
3. Claimant's other requests are also denied;

4. Each of the parties shall bear their own costs and expenses incurred other than those specifically enumerated herein.

**Forum Fees**

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

4 hearing sessions X \$500 = \$2000 minus \$500 = net \$1500 due to the NASD.

Pursuant to Section 43(c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$150, and shall retain the hearing session deposit in the amount of \$500 previously paid to the NASD by the Claimant.

The additional forum fees in the amount of \$1500 are assessed against Claimant in the amount of \$750 and against Respondents, jointly and severally, in the amount of \$750.

The additional forum fees assessed by the panel are payable to the National Association of Securities Dealers, Inc.

**By The Arbitration Panel:**

Dated:

3/10/95

s/s David A. Youngerman, Esq.  
David A. Youngerman, Esq.  
Presiding, Public Arbitrator

3/14/95

s/s Edward C. Statton  
Edward C. Statton, Esq.  
Public Arbitrator

3/12/95

s/s James F. Wade  
James F. Wade  
Industry Arbitrator

Date Award Served By The NASD: 3/20/95