

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Janet T. Flam

94-01741

Name of Respondent(s)

Dean Witter Reynolds Inc.
John Fahey

REPRESENTATION

For Claimant Janet T. Flam ("Flam") appeared Anthony J. Ferrara, Esq., of Polstein, Ferrara & Dwyer, P.C., located in New York, N.Y.

For Respondent Dean Witter Reynolds, Inc., ("Dean Witter") appeared John V. McCambley, Esq., In-house counsel for Dean Witter located in New York, N.Y.

For Respondent John Fahey ("Fahey") appeared John V. McCambley, Esq., In-house counsel for Dean Witter located in New York, N.Y.

CASE INFORMATION

Statement of Claim filed on: May 9, 1994.

Claimant's Submission Agreement signed on: May 4, 1994.

Joint Statement of Answer filed by Respondents Dean Witter and Fahey on: August 25, 1994.

Respondent Dean Witter's Submission Agreement signed on: October 3, 1994.

Respondent Fahey's Submission Agreement signed on: August 18, 1994.

HEARING INFORMATION

Hearing Dates/Sessions:	September 14, 1995	-	2 sessions
	October 25, 1995	-	2 sessions

The hearings took place at the National Association of Securities Dealers, Inc.'s offices located in New York City, New York.

CASE SUMMARY

Claimant Flam alleged that Flam is an unsophisticated investor who needed help in crafting a financial plan for her 71 year old aunt, Kathryn Sondej (currently deceased), also an unsophisticated and unskilled

investor. Flam further alleged that Fahey was a broker employed by Dean Witter. Additionally Flam maintained that Fahey recommended splitting the principal that was then currently invested in the Nuveen fund into two roughly equal portions. Flam also contended that Fahey explained that one portion, approximately one-half, would be invested for an immediate return and that the other would be placed in a longer term investment. Additionally Flam stated that she and Fahey discussed the fact that the long term investment would have to be liquid, provide a reasonable return, and provide for long term growth.

The Claimant contended that contrary to Fahey's representations, the chosen long term investment (150 units of Dean Witter Realty Yield Plus-II) was not appropriate for her aunt because this investment was not liquid, not tradable on any recognized exchange, extremely risky, and at the time of purchase Fahey should have realized that the investment was doomed to lose a substantial portion of its net asset value very quickly.

Respondents alleged that the Claimant chose the investment in Dean Witter Realty Yield Plus--II after full disclosure of its illiquidity and risks. The Respondents contended that disclosure was made both orally and through the prospectus delivered to the Claimant before the investment was made. Additionally, the Respondents averred that the investment has not resulted in any loss of principal but only a reduction of the net asset value. Moreover, as contended by the Respondents the investment in Dean Witter Realty Plus--II met the investment goals of income, aggressive income, and capital appreciation.

The Respondents alleged by way of defenses that the Claimant does not state a claim upon which relief can be granted; that the Claimant lacks standing; that the investment was suitable for and authorized by the Claimant; that the Claimant waived any claim which may have existed; that the Claimant ratified and approved the purchase and is estopped from bringing the claim now; that the Claimant assumed the risks; that Fahey made no oral or written material misrepresentation or omission regarding the investment; that the claim is barred by Section 15 of the NASD Code of Arbitration Procedure; that the Claim is barred by applicable statutes of limitation; that the Claimant's failure to exercise due diligence bars recovery or, in the alternative reduces recovery by her percentage of contributory negligence; that market conditions and the Claimant's investment decisions were the superseding and intervening causes of Claimant's alleged loss; and that the Claimant failed to mitigate her damages.

RELIEF REQUESTED

Claimant requested the Respondents be directed to refund the initial investment of \$75,000 with appropriate interest and should be directed to pay all forum fees.

Respondents requested that the Statement of Claim be dismissed in its entirety and that Respondent's costs assessed against Claimant.

OTHER ISSUES CONSIDERED & DECIDED

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

1. Upon receipt of this decision, the Claimant is to tender her interest in Dean Witter Realty Yield Plus - II to Dean Witter.
2. Respondents Dean Witter and Fahey shall be jointly and severally liable to Claimant in the amount of **TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00)**.
3. The parties shall equally share the cost of forum fees.
4. Any and all other claims are denied.

FORUM FEES

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

Non-refundable Filing Fee:	\$ 150.00
Hearing Sessions (4 @ \$500 each session):	<u>\$2,000.00</u>
Total Fees:	\$2,150.00

1. The Claimant has paid \$650.00 and owes \$475.00 to the NASD.
2. The Respondents have paid nothing and owe \$1,075.00 to the NASD.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

Diane Getzler, Esq.
Diane Getzler, Esq.

Public

AFFIRMATION

I, Diane Getzler, Esq., do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above captioned matter.

Diane Getzler, Esq.
Diane Getzler, Esq.

Date of Decision: December 15, 1995

Concurring Arbitrators' Signatures

Name

James R. Madan
James R. Madan

Public/Industry

Industry

AFFIRMATION

I, James R. Madan, do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above captioned matter.

James R. Madan 11/17/95
James R. Madan

Date of Decision: December 15, 1995