

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Dennis Cooper

vs.

Award No.
94-01895

Name of Respondents

Dean Witter Reynolds Inc.
Raymond Lewis

REPRESENTATION

For Claimant, Denise Cooper, ("Claimant") Stephen G. Thomas, Esq., from the law firm of Thomas & Boles, located in Chagrin Falls, Ohio.

For Respondent, Dean Witter Reynolds, Inc., ("DWR"), Paul D. Allen, Esq., in-house counsel at Dean Witter Reynolds, Inc..

For Respondent, Raymond Lewis ("Lewis") (collectively "Respondents"), Raymond Lewis c/o MFI Investment Corp.

CASE INFORMATION

Statement of Claim was filed on May 16, 1994.

Claimant's Submission Agreement was signed on May 17, 1994.

Statement of Answer was filed by Respondent Raymond Lewis on October 4, 1994.

Lewis' Submission Agreement was signed on October 5, 1994.

Statement of Answer was filed by Respondent, Dean Witter Reynolds, Inc. on October 5, 1994.

DWR's Submission Agreement was signed on October 6, 1994.

HEARING INFORMATION

Hearing Date/Sessions: November 14, 1995 - 2 sessions

Hearing Location: NASD offices, located at 1350 Euclid Avenue, Cleveland, OH, 44135

CASE SUMMARY

Claimant alleges that she was solicited by Lewis and urged to open an account with DWR through Lewis who was employed as a broker customer representative, and investment advisor and counselor to the public by DWR. Claimant further alleges that she had never previously dealt with any brokerage house, nor had she bought, sold, or owned stocks or securities of any type or form and had no knowledge about such transactions. Claimant alleges that on or about November 23, 1992, she signed a blank application form for the purpose of purchasing a type of securities described by Lewis as being in the nature of "options". Claimant further alleges that she advised Lewis that she had no funds available with which to open an account with DWR or to invest in stocks, options or other securities. Claimant further alleges that Lewis advised, urged, and persuaded Claimant to borrow sufficient funds from a loan company so as to enter various transactions, and establish an account with DWR. Claimant alleges that Lewis continuously assured Claimant that Claimant would derive substantial profits from such transaction, and that Claimant and Lewis would both derive considerable benefits by way of anticipated profits. Claimant further alleges that Lewis assured Claimant that in any event she would be protected against any loss.

Claimant alleges that acting solely in reliance on the representations, promises, and assurances of Lewis, acting for himself, and as agent and representative of DWR, Claimant borrowed the sum of \$3,000 from City Loan Financial Services, Inc. at the rate of 24.99% interest. Claimant further alleges that acting solely on the instruction of Lewis, Claimant endorsed the \$3,000 check over to Lewis and upon Lewis' instruction wrote on the back of the check what Lewis represented would be Claimant's account number with DWR. Claimant would be deposited in this account to Claimant's credit and would be invested solely for Claimant's benefit. Claimant alleges that she was advised that she would receive any and all dividends received by reason of the investment of her funds and Claimant would receive monthly statements of her account showing the investments, earnings, and or losses that were incurred. Claimant further alleges that Lewis informed Claimant that the account which was being opened in Claimant's name required the approval of a representative of DWR, and that, thereafter, on or about December 16, 1992, Claimant received a document from DWR indicating that her account had been opened. Claimant alleges that during the six months after she gave the \$3,000 check to the Respondents for the purpose of investing in her account, she did not receive any statement indicating the transactions entered into by Respondents with funds in her account or any information concerning profits or losses derived therefrom. Claimant further alleges that Lewis prepared a promissory note to memorialize his promise to Claimant that she would not lose in this investment. Claimant further alleges that Lewis deposited the money that Claimant borrowed from City Loan to an account titled solely to him instead of to an account titled to Claimant. Claimant further alleges that on December 16, 1992, DWR opened an account solely in the name of Claimant and neither DWR nor Lewis ever transferred the sums received from Claimant to the account opened in her name. Claimant further alleges that when she made her complaint known to DWR, she was told that DWR did not have any funds invested in Claimant's name, and Claimant was later told that she would be required to submit any claims she might have against DWR to binding arbitration, pursuant to the contract by which DWR opened her account on December 16, 1992.

Respondent Dean Witter defends that prior to the time Claimant opened an account at DWR, Claimant agreed to borrow \$3,000 from City Loan Financial Services, Inc. in November 1992 and then lend it to Lewis. DWR alleged that by 1992 Lewis and Claimant had an on going social relationship unrelated to DWR and that DWR believes that on at least one occasion prior to November 1992, Lewis borrowed approximately \$500.00 from Claimant and then repaid it in full with interest. DWR further alleged that with regard to the November 1992 agreement Lewis agreed to repay the \$3,000.00 loan at 24.99% interest directly to City Loan. DWR further alleged that to memorialize the agreement, Lewis gave Claimant an executed promissory note dated November 22, 1992. Respondents alleged that the November 1992 agreement was finalized before Claimant opened a DWR account. DWR alleged that Claimant gave her city loan payment coupon book to Lewis so he could make the payments on Claimant's

behalf to City Loan. DWR further alleged that according to City Loan, Lewis is up-to-date on his payments to City loan. DWR alleged that Claimant has never attempted to repay the loan and thus has incurred no damages. DWR further alleged that in the summer of 1992, Claimant expressed an interest to Lewis in investing in stock mutual funds or options. DWR alleged that in the latter part of November 1992, Claimant filled out an Option Client Information form and other DWR new account documents. DWR alleged that Claimant's account was opened in December 1992 but Claimant never made any deposits or trades. DWR alleged that Claimants claim involves a private transaction between Claimant and Lewis, and Claimant has incurred no damages.

Respondent Raymond Lewis defended by explaining that he and Claimant were dating prior to this filing and Claimant had previously loaned Lewis \$500.00 which was repaid to Claimant one week later with 10% interest. Lewis alleged that Claimant expressed an interest in investing. Respondent alleged that he mentioned to Claimant that he occasionally purchased option contracts for clients but he never guaranteed any returns to Claimant or anyone else. Lewis further alleged that he spoke to Claimant about trading options for himself in his own account and that Lewis and Claimant spoke about how much money Respondent would need. Respondent alleges that Claimant decided to apply for a \$3,000.00 and lend the money to Lewis. Lewis alleged that he suggested that he draw up a promissory note to Claimant to make the monthly payments on the loan. Lewis alleged that this was decided upon before Claimant received approval to trade options at Dean Witter. Lewis alleged that when Claimant received the \$3,000.00 check from city loan Claimant asked Lewis what Respondents account number was when she endorsed the check.

Respondent Lewis alleged that Claimant gave the City Loan payment booklet to Respondent in order for Respondent to make the payments and told Respondent that this was his responsibility. Lewis further alleged that a few weeks after Claimant option account was approved by the Dean Witter office manager, Claimant told Respondent Lewis that she was not interested in trading options so nothing was ever done. Lewis alleged that he began to make the loan payments as agreed.

RELIEF REQUESTED

Claimant requested compensatory damages in the sum of \$5,000.00; punitive damages in the sum of \$5,000.00 for a total of \$10,000.00. Also demand attorneys fees and arbitration costs.

Respondent Dean Witter Reynolds requested that the panel deny the damages requested by Claimant, dismiss the case in its entirety, assess the cost of proceeding against the Claimant and award Dean Witter its attorneys; fees and award Dean Witter such other and further relief as the panel may deem just and proper.

AWARD

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

1. Respondent Lewis is liable to the Claimant in the amount of \$468.29 on the promissory note executed November 11, 1992, to be reduced by any payments made by Lewis to Claimant or City Loan after November 14, 1995.
2. Respondent Lewis is further liable to Claimant in the amount of \$1,200.00.
3. Claimant's claims against Dean Witter are denied.

4. All claims for attorneys fees are denied.
5. Respondent Lewis is liable for all forum fees.
6. Claimant and Respondent Dean Witter are each liable for half the fee for the pre-hearing conference.

FORUM FEES

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

Non-refundable Filing Fee:	\$ 75.00
Pre-Hearing Conference:	\$ 300.00
Hearing Session Deposit:	\$ 400.00
(2 hearing sessions @ \$200.00 per session)	<hr/>
Total Fees:	\$ 775.00

1. Claimant paid \$275.00.
2. Respondent Dean Witter Reynolds, Inc. owes \$150.00.
3. Respondent Lewis owes \$125.00 payable directly to Claimant and \$350.00 payable to the NASD.

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

Sole Public Arbitrator



Jeffrey M. Bain, Esq.
Chairperson

Date of Decision: December 28, 1995