

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Irene Seiden

95-00448

Name of Respondents

Dean Witter Reynolds Inc.  
Dean Witter Distributors Inc.  
Dean Witter Trust Co.  
Intercapital Quality Municipal Securities

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REPRESENTATION

For Claimant, Irene Seiden, appeared Fredrick H. Mandel, Esq., Mandel & Mandel, New York City, New York.

For Respondents Dean Witter Reynolds, Inc., Dean Witter Distributors, Inc., Dean Witter Trust Co. and Intercapital Quality Municipal Securities, appeared John V. McCambley, Esq., Wyckoff, New Jersey.

CASE INFORMATION

The Statement of Claim was filed on January 27, 1995.

Claimant's Submission Agreement was signed on January 12, 1995.

A Joint Statement of Answer was filed by Respondents on June 14, 1995.  
Respondents did not execute Submission Agreements.

HEARING INFORMATION

Hearing Date/Sessions: January 16, 1996 - 2 Sessions

The hearing was held at the NASD offices located in New York City, New York.

### CASE SUMMARY

Claimant alleged that on or about September 22, 1993, she purchased 7,000 shares of Beneficial Interest Intercapital Quality Municipal Securities (Beneficial Interest) from respondents. Claimant alleged that prior to her purchase of this investment, she advised the account executive managing her account of her financial and marital status and that she had no prior experience investing in the stock or bond market.

Claimant further alleged that prior to the trade on September 22, account executive Glen Cutler advised Claimant that these securities were suitable and appropriate for investors in her situation and intended to serve as a substitute for bank Certificate of Deposit and Money Market accounts.

Subsequently, the market price of the investment began to decline. Claimant was allegedly advised to hold the investment in spite of the price decline and that respondent Dean Witter would protect Claimant's interests, and intended to support the price. The value of the investment allegedly began to decline in price. However, respondent has allegedly refused to consider Claimant's claim for reimbursement of her losses.

Respondents denied all allegations of wrongdoing asserted in the Statement of Claim. At the hearing, respondents did not present any witnesses.

In response to the allegations contained in the Statement of Claim, respondents maintained that Claimant purchased her position of Beneficial Interest intercapital Quality Municipal Securities at \$15 per share in 1992 and continues to hold the position. Claimant allegedly received tax free income from this investment which she reinvested in 1993 and 1994. The number of shares Claimant allegedly held as of May 31, 1995 was approximately 7,800. Respondents also maintained that they did not guarantee the success of Claimant's investment nor assure any price appreciation as Claimant alleged.

Respondents further maintained that Claimant authorized the transaction and may not recover; ratified the transaction and may not recover; is estopped from recovering by virtue of Claimant's own conduct; and has failed to mitigate her damages. In Addition, Respondents Dean Witter Distributors, Inc. and Dean Witter Trust Co. maintained that there are no specific allegations of wrongdoing asserted in the Statement of Claim against these respondents and requested that they be dismissed from this matter.

### RELIEF REQUESTED

1. Claimant demands damages of \$500,000, including (i) that Dean Witter (a) re-acquire the security from Claimant at her cost; or (b) reimburse Claimant for the decline in market price; plus (ii) interest from September 22, 1993, sufficient to afford Claimant the economic benefit of her \$105,000 pre-existing bank account; (iii) compensatory damages to cover the mental anguish & physical illness which resulted from her concern over the loss of her funds; (iv) punitive damages; and (v) treble damages for losses attributable to respondent's failure to adequately disclose to Claimant, in the prospectus or otherwise, the potential price-volatility and risk inherent in the securities.
2. Respondents requested an Award dismissing the Statement of Claim plus costs.

**OTHER ISSUES CONSIDERED & DECIDED**

The arbitration panel made the following rulings as to respondents Dean Witter Reynolds, Inc. and Dean Witter Distributors, Inc., both of which filed an answer in this arbitration, but failed to file and present properly executed Submission of the dispute to NASD Arbitration (i.e. Submission Agreement):

1. Pursuant to Section 1 of the NASD Code of Arbitration Procedure ("Code") the panel found subject matter jurisdiction over this entire controversy and specifically at it related to respondents Dean Witter Reynolds, Inc. and Dean Witter Distributors, Inc.
2. The panel found that respondents Dean Witter Reynolds, Inc. and Dean Witter Distributors, Inc. were Members of the NASD at the time this controversy arose.
3. In view of (2) above, respondents Dean Witter Reynolds, Inc. and Dean Witter Distributors, Inc. were required to execute and file with the NASD a submission agreement pursuant to Section 25(b) of the Code. In this regard the panel found that the NASD properly served the Claimant's claims upon respondents pursuant to Section 25 (a) of the Code.
4. The panel found that respondents Dean Witter Trust Co. and Intercapital Quality Municipal Securities voluntarily submitted to the jurisdiction of the NASD for purposes of arbitrating this matter.

**AWARD**

1. Respondent Dean Witter Reynolds, Inc., be and hereby is liable and shall pay to the Claimant the sum of \$15,750.00, interest specifically excluded.
2. All Claims against respondents Dean Witter Distributing, Inc., Dean Witter Trust Co., and Intercapital Quality Municipal Securities, Inc. be and hereby are dismissed with prejudice.
3. All claims for compensatory damages as a result of mental anguish and physical illness be and hereby are dismissed with prejudice.
4. Claimant's claim for punitive damages be and hereby is dismissed with prejudice.
5. Claimants' claim for treble damages be and hereby is dismissed with prejudice.
6. Each party shall bear their respective costs, including attorney's fees.

**FORUM FEES**

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

First adjournment	=	\$ 750.00
Second adjournment	=	\$1,000.00
Two Hearing Sessions x \$750.00	=	\$1,500.00
		\$3,250.00 - \$750.00 = \$2,500.00

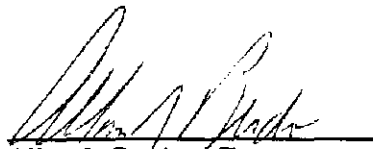
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Respondent Dean Witter Reynolds, Inc. be and hereby is liable and shall pay to the NASD the sum of \$2500.00.

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

Concurring Arbitrator's Signature  
Name

  
Allan J. Berdon, Esq.

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Mark S. Brody

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James M. Smith, Esq.

I, Allen Berdon, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules that this is my decision in the above-captioned matter.

  
Allen Berdon

NASD Date of Decision: April 10, 1996

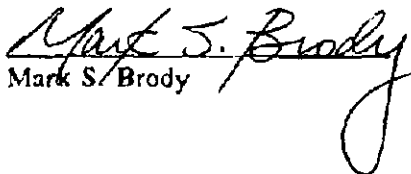
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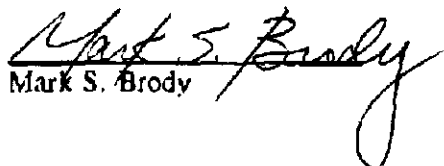
Concurring Arbitrator's Signature  
Name

\_\_\_\_\_  
Allan J. Berdon, Esq.

  
Mark S. Brody

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James M. Smith, Esq.

I, Mark S. Brody, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules that this is my decision in the above-captioned matter.

  
Mark S. Brody

NASD Date of Decision: April 10, 1996

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Concurring Arbitrator's Signature  
Name

\_\_\_\_\_  
Allan J. Berdon, Esq.

\_\_\_\_\_  
Mark S. Brody

  
James M. Smith, Esq.

I, James M. Smith, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules that this is my decision in the above-captioned matter.

  
James M. Smith

NASD Date of Decision: April 10, 1996