

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Robert B. Hutchinson

95-00763

Name of Respondents

Dean Witter Reynolds, Inc.
Bruce Eisen

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 13, 1995, Claimant Robert B. Hutchinson, Esq., who appeared Pro Se, alleged that Respondents Dean Witter Reynolds, Inc. ("DWR") and Bruce Eisen ("Eisen"), charged a commission for the transfer of his account despite an agreement to the contrary. Claimant further alleged that he established an option account with DWR on October 4, 1993, with Eisen as his account executive. Claimant contended that during March of 1994, Eisen informed him that he would be leaving DWR to join Prudential Securities, Inc. ("PSI") and Eisen represented to the Claimant that his positions in certain futures options could be transferred to PSI at no cost to Claimant without jeopardizing his position in any way. Claimant further contended that without his prior consent or knowledge the transfer was affected by actual sale of positions by DWR and the repurchase of those same positions by PSI generating commissions and fees at both DWR and PSI. Claimant alleged that as a result of the above, he has suffered a loss for which Respondents should be liable.

Respondents Dean Witter Reynolds, Inc. and Bruce Eisen, through their representative, Janet T. Epstein, Esq., San Francisco, CA., maintained that when Claimant opened a DWR futures account, he signed a contract authorizing DWR to charge him fees for the transfer of options on futures positions to another member firm. Respondents further maintained that when Claimant sent instructions to DWR to transfer each of his account positions to PSI, DWR charged Claimant fees to transfer the positions as it had been authorized to do by Claimant. Respondents contended that Eisen told Claimant that PSI would not charge any fees in connection with the transfer, but did not tell Claimant that either DWR or any futures exchange would waive their fees. As a result of the above, Respondents maintained that they should not be held liable in this matter.

RELIEF REQUESTED

Claimant Robert B. Hutchinson, requested \$464.89 in actual damages.

Respondents Dean Witter Reynolds, Inc. and Bruce Eisen, requested that the claims of the Claimant be dismissed.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Bernard Segelin, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on February 28, 1995, by Respondent Dean Witter Reynolds, Inc. on April 26, 1995, and not by Respondent Bruce Eisen as required by Sections 12 and 13 of the NASD Code of Arbitration Procedure.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent Bruce Eisen, is liable and shall pay to the Claimant Robert B. Hutchinson, \$464.89 in actual damages.
2. Respondent Bruce Eisen, is liable and shall pay to the Claimant Robert B. Hutchinson simple interest at the rate of 10% per annum from February 8, 1995 to August 13, 1995.
3. The claims of the Claimant Robert B. Hutchinson, against Respondent Dean Witter Reynolds, Inc., are dismissed in their entirety.
4. The parties shall bear their respective costs.
5. The \$30.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Robert B. Hutchinson, shall be retained by the NASD, Inc. Respondent Bruce Eisen, is liable and shall pay to the Claimant Robert B. Hutchinson, \$30.00 as reimbursement of the filing fee.

Affirmation

STATE OF *California* } ss:

COUNTY OF *Los Angeles*

I, Bernard Segalman, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my oath and award.

award.

Bernard Segalini

Signature of Arbitrator

Decision: September 11, 1995