

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

Angelita F. Tomanek
Thomas J. Tomanek

NASD Arbitration
No. 95-01091

Name of Respondent(s)

Dean Witter Reynolds Inc.
Jeffrey M. Seidel
Ronald Sherman
Carl Hulick

REPRESENTATION

For Claimants: Karl R. Molineux, Esq., Smith, Merrill & Pepper,
San Ramon, California

For Respondents: Timm A. VerDuin, Esq., Dean Witter Reynolds Inc.,
San Francisco, California

CASE INFORMATION

Statement of Claim filed: February 28, 1995

Claimants' Submission Agreement signed: March 20, 1995

Joint Statement of Answer filed by Respondents: May 3, 1995

Respondents' Submission Agreements signed as follows:

Dean Witter Reynolds Inc.: April 24, 1995
Jeffrey M. Seidel: April 26, 1995
Ronald Sherman: April 10, 1995
Carl Hulick: April 20, 1995

HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s):

May 16, 1996 (one session)

Hearing Date(s)/Session(s): June 18, 1996 (two sessions)

June 19, 1996 (two sessions)

June 20, 1996 (two sessions)

June 21, 1996 (one session)

Hearing Location:

San Francisco, California

CASE SUMMARY

Claimants alleged that they are two elderly individuals who were unsophisticated and relatively inexperienced in securities transactions and were induced by Respondents to invest over eighty percent of their liquid assets in the stock of a small bank whose securities were neither traded on a national securities exchange nor listed on NASDAQ. Claimants further alleged that in December 1989 Respondents began touting to the Claimants the stock of Charter Pacific Bank (Charter), a small two-branch bank about which Claimants had previously been unfamiliar. Claimants further alleged that by November 1991 Respondents had successfully induced Claimants to invest \$431,145.57 of their total portfolio of \$532,000.00 in this stock through false representations, fraudulent misrepresentations, omissions, and negligence. Claimants further alleged that Respondents were so successful in inducing Claimants to invest the bulk of Claimants' money in this illiquid security, that by December 1990 Respondents owned approximately 2% of the issued and outstanding shares of the Bank. Claimants further alleged that as a result of the fraudulent inducements and misrepresentations made by Respondents regarding this investment, Claimants were left with a portfolio of illiquid and substantially worthless stock, resulting in a loss to Claimants of an amount in excess of \$400,000.00. Claimants further alleged unsuitability, securities law violations and failure to supervise in connection with their investment.

Respondents denied Claimants' allegations of wrongdoing and alleged that in December 1989, when Claimants began acquiring Charter stock, Claimants were both in their fifties, highly educated, and with very substantial investment and business

experience. Respondents further alleged that Claimants had a net worth well in excess of \$1,000,000.00 and annual income approaching \$200,000.00 and alleged that an aggressive investment like Charter was unquestionably suitable for Claimants. Respondents further alleged that while Mr. Seidel (Claimants' broker) did originally recommend Charter stock to Mr. Tomanek, Mr. Seidel never recommended that the Claimants acquire the very large position which they gradually accumulated over a one-year period and alleged that it was Mr. Tomanek's idea and desire to invest so heavily in that stock, motivated purely by his thirst for very large profits. Respondents further alleged that Mr. Seidel never misrepresented any facts regarding Charter, always describing it truthfully as a small bank whose stock carried significant risks and alleged that Claimants fully understood this. Respondents Sherman and Hulick further alleged that they never acted as the Claimants' broker and never had any conversations with Claimants prior to the Claimants' purchases of Charter stock; only after the relevant investments were made did Mr. Tomanek speak a few times to Mr. Sherman and to Mr. Hulick regarding the progress of Charter; and that on those occasions, Messrs. Sherman and Hulick would share whatever information they had with Mr. Tomanek and would refer him to Charter's management for additional information. Respondents also asserted various defenses.

RELIEF REQUESTED

Claimants requested rescission of their original amounts paid for the Charter stock in the amount of \$431,145.57, plus interest thereon at 10% per annum from the date of such purchase until paid; costs and attorneys fees in the amount to be proven at arbitration; and punitive damages.

Respondents requested dismissal of Claimants' Claim in its entirety and that Respondents be awarded their costs and expenses.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in either 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 National Association of Securities Dealers, Inc. (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. All claims by Claimants against Respondent Ronald Sherman are dismissed.

2. Respondents Dean Witter Reynolds Inc., Jeffrey M. Seidel and Carl Hulick are jointly and severally liable for and shall pay to Claimants the sum of \$25,000.00 or, at Claimants' option made within ten business days following the date of service of this Award, Respondents Dean Witter Reynolds Inc., Jeffrey M. Seidel and Carl Hulick shall pay Claimants \$5.00 per share for a total of 10,000 shares of Charter stock. Said payment shall be at \$5.00 net to the seller.

3. Claimants' claim for punitive damages is denied.

4. The parties shall each bear their respective costs including attorney's fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall refund Claimants' hearing deposit in the amount of \$1,000.00. Forum fees are assessed against Respondent Dean Witter Reynolds Inc., solely, in the amount of \$7,300.00, calculated as follows: One pre-hearing session times \$300.00 plus seven hearing sessions times \$1,000.00.

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

ARBITRATORS

Name Public / Industry

Margaret Kallman, Esq.

Public Arbitrator

Angie Lame

Public Arbitrator

Donald S. Duerson

Industry Arbitrator

Concurring Arbitrators' Signatures

Margaret Kallman, Esq.

Angie Lame

Angie Lame

Donald S. Duerson

Date of Decision: _____

Date served: 7/10/96

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