

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

Joan C. Kitchen

NASD Arbitration

No. 95-01917

Name of Respondent(s)

Dean Witter Reynolds Inc.
TCW Asset Management Company

REPRESENTATION

For Claimant: Gary Y. Okuda, Esq., Leu & Okuda, Honolulu, Hawaii

For Respondent Dean Witter Reynolds Inc.: Paul Allen, Esq., Dean Witter Reynolds Inc., San Francisco, California

For Respondent TCW Asset Management Company: Philip K. Holl, Esq., TCW Asset Management Company, Los Angeles, California

CASE INFORMATION

Statement of Claim filed: April 7, 1995

Claimant's Submission Agreement signed: April 7, 1995

Statement of Answer filed by Respondent Dean Witter Reynolds Inc:
June 8, 1995

Statement of Answer filed by Respondent TCW Asset Management
Company: June 8, 1995

Respondents' Submission Agreements signed as follows:

Dean Witter Reynolds Inc.: June 8, 1995

TCW Asset Management Company: June 8, 1995

HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s): None

Hearing Date(s)/Session(s): November 5, 1996 (two sessions)

Hearing Location: Honolulu, Hawaii

CASE SUMMARY

Claimant alleged that she was seeking a conservative approach with respect to the management of her account. Claimant further alleged that Respondents failed to properly manage her account and alleged that various securities purchased for her account were inappropriate given Claimant's age and investment objectives.

Respondent Dean Witter Reynolds Inc. (Dean Witter) denied each and every allegation of liability raised against it in Claimant's Claim and alleged that the above-captioned dispute is an action by an affluent investor who dedicated a modest portion of her net worth to a managed account, became dissatisfied with its short-term performance, and then hastily withdrew her funds, and that Claimant now seeks to hold Respondents liable for her losses. Dean Witter further alleged that Claimant's Claim cannot succeed against Dean Witter, for at least the following reasons: 1) When Claimant selected an advisor, she agreed in writing that the advisor, and not Dean Witter, would be solely responsible for the management of her account; 2) Dean Witter provided Claimant with three candidates to manage her account. Dean Witter selected these candidates on the basis of information which Claimant provided concerning her objectives and circumstances; 3) Dean Witter provided Claimant with complete and accurate information concerning these candidates, from which she made an informed selection of Respondent TCW Asset Management Company (TCW); and 4) Claimant's alleged damages result from losses she chose to realize by failing to follow her own previously stated investment horizon. Dean Witter also asserted various defenses.

Respondent TCW denied any liability to Claimant and alleged that Claimant is an affluent investor who knowingly invested in the Balanced Portfolio Investment Strategy of the Dean Witter Access "wrap fee" program and is now disappointed in its performance. TCW further alleged that with 20-20 hindsight, Claimant seeks to make

TCW a guarantor against any losses suffered, and that Claimant had losses in her account and would like them to be made up to her. TCW further alleged that: 1) Claimant's account was managed in accordance with Claimant's investment objective and time horizon and that it was Claimant's premature closing of her Portfolio account that produced Claimant's losses; 2) Unforeseeable market forces, such as the Federal Reserve Board's unprecedented seven interest rate hikes in one year and the unexpected devaluation of the Mexican peso, further contributed to losses in Claimant's account; and 3) Claimant cannot demonstrate that TCW acted in bad faith or was reckless of its obligations or in violation of law. TCW also asserted various defenses.

RELIEF REQUESTED

Claimant requested damages in the amount of \$62,209.75.

Respondents Dean Witter and TCW requested dismissal of Claimant's claims.

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 Claimant are dismissed.
2. 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 retain the \$500.00 hearing session deposit previously deposited by the Claimant. Forum fees shall be split between the parties and are calculated as follows:

Two hearing sessions @ \$500.00/session	=	\$1,000.00
Total fees assessed	=	\$1,000.00
Claimant's share (50%)	=	\$ 500.00
Credit for hearing deposit	=	\$ 500.00
Balance due	=	\$ 0.00
Respondents' share, jointly and severally (50%)	=	\$ 500.00
Balance due	=	\$ 500.00

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

ARBITRATORS

Name _____ Public / Industry

Vernon F.L. Char, Esq.
David J. Anderson

Public Arbitrator
Public Arbitrator

GENERAL ACKNOWLEDGMENT

NO. 28

State of Hawaii }
County of Maua } SS.

On this the 27 day of November 1996, before me,

CHARL BEETLEY

the undersigned Notary Public, personally appeared

David J. Anderson

☒ personally known to me
☐ proved to me on the basis of satisfactory evidence
to be the person(s) whose name(s) David J. Anderson subscribed to the
within instrument, and acknowledged that David J. Anderson executed it.
WITNESS my hand and official seal.

David J. Anderson
Notary's Signature

ATTENTION NOTARY: Although the information requested below is OPTIONAL, it should prevent misplacement of this certificate to another document.

THIS CERTIFICATE
MUST BE ATTACHED
TO THE DOCUMENT
DESCRIBED AT RIGHT:

Title or Type of Document 1000.00
Number of Pages 1 Date of Document 11/27/96
Signer(s) Other Than Named Above None

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ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Vernon F.L. Char, Esq.	Public Arbitrator
David J. Anderson	Public Arbitrator
Larry C. Jackson	Industry Arbitrator

Concurring Arbitrators' Signatures

Vernon F.L. Char, Esq.

David J. Anderson

Larry C. Jackson

Date of Decision: _____