

AWARD

N.A.S.D. Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimants

Clarence and Gloria Hebert
(Joint Account and IRA), and
Hebert Bros. Dodge, Inc.

and

Case Number: 95-03428

Name of Respondent

Dean Witter Reynolds, Inc.

REPRESENTATION OF PARTIES

Claimants Clarence and Gloria Hebert (Joint Account and IRA) and Hebert Bros. Dodge, Inc. ("Claimants") were represented by James E. Stovall, Esq. of Metairie, Louisiana.

Respondent Dean Witter Reynolds, Inc. ("Respondent") was represented by Clave E. Gill, Esq. of Gill & Bollman located in Covington, Louisiana.

CASE INFORMATION

The Statement of Claim was filed on or about July 17, 1995.

Claimants' Submission Agreement was signed on July 15, 1995 by Clarence Hebert, individually and as President of Hebert Bros. Dodge, Inc., and by Gloria Hebert, individually.

The Statement of Answer was filed on or about October 12, 1995.

Respondent's Submission Agreement was signed on August 29, 1995 by Judith M. Rosenberg, First Vice President and Assistant General Counsel of Dean Witter Reynolds, Inc.

The Supplement and Amendment to Statement of Claim was filed on or about March 22, 1996.

The Supplemental Response was filed on or about June 4, 1996.

HEARING INFORMATION

A telephonic pre-hearing conference was held on June 19, 1996 for one (1) session.

The Hearing was held on January 9, 1997 for two (2) sessions and January 10, 1997 for two (2) sessions.

The Hearing location was New Orleans, Louisiana.

CASE SUMMARY

Claimants alleged that three securities accounts were opened and maintained at Respondent Dean Witter Reynolds, Inc.'s office in Morgan City, Louisiana (the "Morgan City office"). The three accounts were: (1) the Clarence and Gloria Hebert Joint Account; (2) the Clarence Hebert, Sr. IRA; and (3) the Hebert Bros. Dodge, Inc. Account. Claimants contended that Jody M. Felterman ("Felterman") was the registered representative employed by Respondent and that Felterman serviced all three accounts at all relevant times.

Claimants asserted that they lost substantial portions of sums deposited in the accounts in reliance upon Respondent's recommendations and representations involving certain gambling stocks purchased by Claimants. Claimants maintained that Claimants' accounts contained an extremely high concentration in gambling stocks, such as Casino Magic Corp, and that these stocks were unsuitable for Claimants. Claimants also asserted that risky margin trading was engaged in by Respondent with Claimants' money, and that Claimants were never informed regarding interest Claimants were charged in the account. Claimants further maintained that there was no ongoing management or supervision of the Morgan City office.

Claimants also alleged that a criminal enterprise was operated out of the Morgan City office which utilized money from customers, including Claimants. Claimants contended that 29 counts of criminal wrongdoing involving customers of the Morgan City office were filed against Felterman in Federal Court, and that Felterman pled guilty to all 29 counts. Claimants asserted that they are presently involved in a state court action involving an entirely separate set of damages relating to an alleged "Ponzi Scheme" which Felterman had allegedly been operating at the same time he was employed by Respondent.

Respondent denied all liability to Claimants in its Statement of Answer. Respondent alleged that Claimants' accounts were non-discretionary, and all transactions made in their accounts were done with Claimants' knowledge and consent. Respondent contended that Claimants were aware of the risks involved in the transactions at issue, and of the speculative nature of certain transactions. Respondent asserted that Claimants signed a margin account agreement and all margin interest charges appeared on their monthly statements. Respondent maintained that the Claimants' ownership of gambling stocks was suitable. Respondent asserted that the Heberts were frequent gamblers at casinos and racetracks, had a net worth of 1.25 million, and traded gambling stocks in other brokerage accounts other than at Dean Witter.

RELIEF REQUESTED

Claimants alleged damages in the following sums: (1) \$44,613.90 in the Clarence and Gloria Hebert Joint Account; (2) \$42,131.90 in the Clarence Hebert, Sr. IRA; and (3) \$406,497.50 in the Hebert Bros. Dodge, Inc. Account. Claimants also requested an award of punitive damages.

Respondent requested that the Statement of Claim be dismissed in its entirety at Claimants' cost.

OTHER ISSUES CONSIDERED & DECIDED

Respondent's Motion for a More Definite Statement was granted.

Respondent's Motion to Exclude Evidence and Testimony was denied.

Claimants' First Request for an Adjournment was granted.

Claimants' Second Request for an Adjournment was granted.

Respondent's First Request for an Adjournment was granted.

Respondent's Second Request for an Adjournment was granted.

The parties have agreed that the Award in this matter may be executed in 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 original(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

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. Dean Witter Reynolds, Inc. is liable for, and shall pay to Clarence Hebert and Gloria Hebert the sum of One Dollar and No Cents (\$1.00);
2. Other than forum fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
3. Any relief not specifically enumerated is hereby denied.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 per pre-hearing session, if any. There were four (4) hearing sessions x \$750 = \$3,000 in forum fees. There was one (1) pre-hearing session x \$300 = \$300 in forum fees. Total forum fees = \$3,300. Pursuant to §10332(b) of the NASD Code of Arbitration Procedure (the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10319(b) of the Code, a party requesting an adjournment after arbitrators have been appointed shall deposit with the request for an adjournment a fee equal to the initial deposit of hearing session fees for the first adjournment and twice the initial deposit of hearing session fees, not to exceed \$1,000, for a second or subsequent adjournment requested by that party.

Pursuant to §10332(c) of the Code, Respondent Dean Witter Reynolds, Inc. is assessed, and shall pay forum fees in the amount of \$3,300.

Pursuant to §10333(c) of the Code, Respondent Dean Witter Reynolds, Inc. is assessed, and shall pay the Member Surcharge in the amount of \$350.

Pursuant to §10332(c) and §10319(b) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the \$750 postponement fee previously deposited by Respondent Dean Witter Reynolds which has been assessed in connection with Respondent's First Request for an Adjournment. Pursuant to §10332(c) and §10319(b) of the Code, Respondent Dean Witter Reynolds is assessed, and shall pay the postponement fee in the amount of \$1,000 in connection with Respondent's Second Request for an Adjournment.

—

Pursuant to §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$200 previously deposited by the Claimants Clarence and Gloria Hebert and Hebert Bros. Dodge, Inc. Pursuant to §10332(c) and §10319(b) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the hearing session deposit in the amount of \$750 previously deposited by the Claimants Clarence and Gloria Hebert and Hebert Bros. Dodge, Inc. as payment of the postponement fee assessed in connection with Claimants' First Request for an Adjournment. Pursuant to §10332(c) and §10319(b) of the Code, Claimants Clarence and Gloria Hebert and Hebert Bros. Dodge, Inc. are assessed, and shall pay the postponement fee in the amount of \$1,000 in connection with Claimants' Second Request for an Adjournment.

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

Concurring Arbitrators' Signatures

/s/ Clayton J. Borne, III, Esq.
Clayton J. Borne, III, Esq.
Chairperson
Public Arbitrator

January 21, 1997
Dated:

/s/ Daniel Eugene Bivins, III
Daniel Eugene Bivins, III
Panelist
Public Arbitrator

January 21, 1997
Dated:

/s/ Ronald M. Roberts, PhD.
Ronald M. Roberts, PhD.
Panelist
Industry Arbitrator

January 23, 1997
Dated:

For NASD Regulation use only:
Date award served on the parties: January 29, 1997