

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

Orrin Whitney Matthews and  
Mildred Warren Matthews, Trustees  
of the Matthews Family Revocable  
Trust Dated 8/17/82

NASD Arbitration  
No. 95-03483

Name of Respondent(s)

Dean Witter Reynolds Inc.  
Joseph H. Kimura

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REPRESENTATION

For Claimants: Jeffrey P. Lendrum, Esq., Post Kirby Noonan &  
Sweat, San Diego, California

For Respondents: Wendy R. Robinson, Esq., Dean Witter Reynolds  
Inc., San Francisco, California

CASE INFORMATION

Statement of Claim filed: July 14, 1995

Claimants' Submission Agreements signed: August 2, 1995

Joint Statement of Answer filed by Respondents: September 27, 1995

Respondents' Submission Agreements signed as follows:

Dean Witter Reynolds Inc.: September 26, 1995

Joseph H. Kimura: September 1, 1995

### HEARING INFORMATION

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

Hearing Date(s)/Session(s): August 27, 1996 (two sessions)  
August 28, 1996 (two sessions)  
August 29, 1996 (two sessions)  
August 30, 1996 (one session)

Hearing Location: San Diego, California

### CASE SUMMARY

Claimants Orrin Whitney Matthews (General Matthews) and Mildred Warren Matthews, as trustees of the Matthews Family Revocable Trust dated 8/17/82 (Trust) alleged that at the recommendation of Respondents, Claimants invested nearly \$2.8 million, or virtually all of the Trust's assets, in a Dean Witter proprietary fund, the Dean Witter North American Government Income Fund (Fund). Claimants further alleged that after learning that the price of the Fund had declined, an occurrence that Respondents assured Claimants would not happen, and fearing for the safety of their retirement, directed Respondents to liquidate all shares of the Fund held by the Trust. Claimants further alleged that Respondents refused to comply with this instruction for more than one month, resulting in losses of more than \$83,000.00.

Respondents denied each and every allegation of wrongdoing contained in Claimants' Statement of Claim and further denied that Claimants have been damaged in the sum alleged or in any amount whatsoever. Respondents alleged that there is absolutely no merit to the allegation that either General Matthews or William Matthews gave an order to liquidate the Matthews' entire TCW/DW North American Government Income Trust (TNORA) position either on February 7 or March 17, 1994. Respondents further alleged that Mr. Kimura never ignored or refused or delayed in entering any order from either General Matthews or William to liquidate any amount of TNORA. Respondents further alleged that Joseph Kimura always obediently, diligently, and faithfully followed every instruction from the Matthews.

### RELIEF REQUESTED

Claimants requested:

1. Actual damages in the amount to be proven at arbitration;
2. Prejudgment interest on all of Claimants' damages;
3. Costs, including attorneys' fees; and
4. Such other and further relief as the arbitration panel may deem just and proper.

Respondents requested dismissal of Claimants' Claim in its entirety, that Respondents be awarded their costs and attorney's fees, and requested such other further relief as the arbitrators deem appropriate.

### 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 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 Claimants. Forum fees are to be split between Claimants and

Dean Witter Reynolds Inc. and are calculated as follows:

Seven hearing sessions @ \$500.00/session	=	\$3,500.00
Total fees assessed	=	\$3,500.00
Claimants' share (50%)	=	\$1,750.00
Credit for hearing deposit	=	\$ 500.00
Balance due	=	\$1,250.00
Dean Witter's share (50%)	=	\$1,750.00
Balance due	=	\$1,750.00

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

ARBITRATORS

Name \_\_\_\_\_ Public / Industry

Merton A. Bobo, Esq.

Public Arbitrator

Joel C. Estes, Esq.


Public Arbitrator

Warren R. Grundmeyer

Industry Arbitrator

Concurring Arbitrators' Signatures

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Merton A. Bobo, Esq.

  
\_\_\_\_\_  
Joel C. Estes, Esq.

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Warren R. Grundmeyer

Date of Decision: 8/30/96

Date served: 10/07/1996

Dean Witter Reynolds Inc. and are calculated as follows:

Seven hearing sessions @ \$500.00/session	=	\$3,500.00
Total fees assessed	=	\$3,500.00
Claimants' share (50%)	=	\$1,750.00
Credit for hearing deposit	=	\$ 500.00
Balance due	=	\$1,250.00
Dean Witter's share (50%)	=	\$1,750.00
Balance due	=	\$1,750.00

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<u>Name</u>	<u>Public / Industry</u>
Merton A. Bobo, Esq.	Public Arbitrator
Joel C. Estes, Esq.	Public Arbitrator
Warren R. Grundmeyer	Industry Arbitrator

Concurring Arbitrators' Signatures

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Merton A. Bobo, Esq.

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Joel C. Estes, Esq.

*Warren R. Grundmeyer*  
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Warren R. Grundmeyer

Date of Decision: *Sept 5, 1996*

Date served: 10/07/1996

Dean Witter Reynolds Inc. and are calculated as follows:

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Total fees assessed	=	\$3,500.00
Claimants' share (50%)	=	\$1,750.00
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Public Arbitrator


Joel C. Estes, Esq.

Public Arbitrator

Warren R. Grundmeyer

Industry Arbitrator

Concurring Arbitrators' Signatures

  
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Merton A. Bobo, Esq.

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Joel C. Estes, Esq.

\_\_\_\_\_  
Warren R. Grundmeyer

Date of Decision: \_\_\_\_\_

Date served: 10/07/1996