

## NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between

Name of Claimant

Thomas J. White

and

95-03701

Name of Respondent

Dean Witter Reynolds, Inc.

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### REPRESENTATION OF PARTIES

Thomas J. White ("Claimant") was represented by Christopher R. Alger, Esq., Denver, Colorado.

Dean Witter Reynolds, Inc. ("Respondent") was represented by Ralph P. Schiavo, Esq., Dean Witter Reynolds, Inc., New York, New York.

### CASE INFORMATION

The Statement of Claim was filed on or about July 31, 1995. Submission Agreement of Claimant Thomas J. White was signed on July 26, 1995.

Statement of Answer was filed by Respondent Dean Witter Reynolds, Inc. on or about September 22, 1995. Submission Agreement of Respondent Dean Witter Reynolds, Inc. was signed on September 22, 1995 by Erica Bunin.

### HEARING INFORMATION

A pre-hearing conference was held on Thursday, February 22, 1996 for one (1) session with Donald P. Loyd, Esq., presiding.

The hearing was held on Friday, February 23, 1996 in Denver, Colorado for one (1) session.

### CASE SUMMARY

Claimant alleged that Respondent breached the employment agreement ("Letter Agreement") between the parties when it presented him with a Proposed Additional Agreement. Claimant

alleged that the employment agreement was breached when it attempted to force him to accept the additional terms of employment that he could not accept.

Respondent denied the allegations set forth in the Statement of Claim. Respondents specifically stated that the Claimant had received a letter summarizing the offer of employment between the parties. In response to the allegation that Claimant suffered damages when Respondent refused to honor the terms of the "Letter Agreement", Respondents stated that it merely required Claimant to sign the same employment agreement that all of its other account executives must sign which did not supersede the contents of the letter.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$5,213, plus additional damages to be determined at the arbitration hearing for lost business opportunities. Claimant also requested reimbursement for all costs and expenses incurred in connection with this claim, together with interest.

Respondent requested that the claims asserted against it be denied in their entirety and that Claimant be responsible for all costs of this arbitration, including reasonable attorneys' fees, for a total of \$5,000.

### **OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that a handwritten, signed Award may be entered and to receive conformed copies of the award while the original(s) remain on file with the NASD.

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. The claims asserted in this matter shall be and hereby are denied in their entirety.
2. Each party shall bear its own costs, expenses and attorneys' fees incurred in this matter not specifically enumerated herein.

### **FORUM FEES**

Forum fees are calculated at the rate of \$300 per hearing session and \$300 for each prehearing conference, if any. There were two (2) sessions x \$300 = \$600 in forum fees. Pursuant to §43(b) 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 §44(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$500, and shall retain as forum fees the hearing session deposit in the amount of \$300 previously deposited with the NASD by the Claimant. Respondent Dean Witter Reynolds, Inc. shall be and hereby is liable for and shall pay to the NASD the sum of \$300 as the balance due for forum fees and the sum of \$100 as the surcharge(s) imposed pursuant to §45 of the NASD Code of Arbitration Procedure. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

/s/ Donald P. Loyd, sq.

Donald P. Loyd, Esq.

Industry Arbitrator, Presiding Chair

February 29, 1996