

NASD Arbitration & Mediation

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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Murray Fisherman

95-04165

Name of Respondents

Dean Witter Reynolds Inc.
Barry F. Cavagnaro
Frank Alecci

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on August 30, 1995, Claimant Murray Fisherman ("Claimant"), who appeared Pro Se, alleged that Respondents Dean Witter Reynolds Inc. ("DWR"), Barry Cavagnaro ("Cavagnaro"), a DWR broker, and Frank Alecci ("Alecci"), a DWR manager, overcharged him on commissions and fees. Claimant further alleged that he was surprised when he received a monthly statement notifying him of a margin call due to late fees because he had always paid his bills on time, and had never received a late payment notice. Claimant contended that he cancelled his DWR account and was then unjustly penalized by DWR with higher commission fees. Claimant further contended that his NJ Health Care Fac. bond was called, and that DWR had never told him that he had a "sinking fund." Claimant maintained that he has attempted to call DWR numerous times to no avail, and therefore, he has suffered a loss for which the Respondents should be held liable.

Respondents Dean Witter Reynolds Inc., Barry Cavagnaro and Frank Alecci, through their representative and in-house counsel, Debra A. Roth, Esq., maintained that Claimant was fully advised as to fee and commission charges in connection with his accounts. Respondents further maintained that as to Claimant's NJ Health Care Fac. bond, Claimant previously filed an arbitration wherein Dean Witter Reynolds Inc. settled with Claimant as goodwill. Respondents further contended that contrary to Claimant's statements, Claimant did occasionally make purchases on margin and late payments resulting in additional charges. Respondents maintained that as a goodwill gesture, Cavagnaro regularly provided Claimant with a substantial discount on stock and/or options trades, but once DWR was notified that Claimant was withdrawing his accounts, there was little reason to continue to discount for him. Respondents further maintained that Claimant is a sophisticated investor who was well-aware that the bonds in question were callable and that they committed no wrongdoing; and therefore, they should not be held liable.

RELIEF REQUESTED

Claimant Murray Fisherman requested \$660.00, in actual damages.

Respondents Dean Witter Reynolds Inc., Barry Cavagnaro, and Frank Alecci, requested that the claims of the Claimant be dismissed.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, William J. Brennan, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Murray Fisherman on August 21, 1995, and not by the Respondents Dean Witter Reynolds Inc., Barry Cavagnaro, and Frank Alecci as required by Sections 12 and 13 of the NASD, Inc. Code of Arbitration Procedure.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent Dean Witter Reynolds Inc. is liable and shall pay to the Claimant Murray Fisherman, \$422.50 in actual damages.
2. The claims of the Claimant Murray Fisherman, against the Respondents Barry Cavagnaro and Frank Alecci are dismissed in their entirety.
3. All other relief requests are denied.
4. The parties shall bear their respective costs.
5. The \$30.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Murray Fisherman, shall be retained by the NASD, Inc.

AFFIRMATION

STATE OF *NEW JERSEY*

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SS: 000-22-2583

COUNTY OF *MONMOUTH*

I, *WILLIAM J BRENNAN*, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

William J Brennan

Signature of Arbitrator

DATE OF DECISION: April 30, 1996