

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

James J. Tiernan

95-04182

Name of Respondent

Dean Witter Reynolds Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on August 31, 1995, Claimant James J. Tiernan ("Claimant"), who appeared Pro Se, alleged that Respondent Dean Witter Reynolds Inc. ("Respondent") improperly charged him an early withdrawal penalty. Claimant further alleged that he improperly transferred his IRA account, except his investment in Dean Witter US Government Securities Trust, which was to be liquidated in the near future, to Tucker Anthony Inc. Claimant contended that his account executive Chip Hawkins informed him that a liquidation and distribution at his age could be made without a penalty. Claimant further contended that on May 23, 1994, he signed an IRA termination form and requested that payment be made to him. Claimant alleged that Respondent sent the check to Tucker Anthony Inc. and charged him a penalty for "early withdrawal". Claimant further alleged that he attempted to correct the situation, but was unsuccessful and as a result of this wrongdoing, he has suffered damages for which Respondent should be liable.

Respondent Dean Witter Reynolds Inc., through its representative and in-house counsel, Debra A. Roth, Esq., maintained that Claimant failed to cancel the ACATS request, which is effective for a period of six months and that any cash received into his account while it is in effect would automatically be transferred to Tucker Anthony, Inc. Respondent further maintained that when Claimant sold his remaining investment, the funds were sent to Tucker Anthony Inc. in accordance with ACATS. Respondent contended that it provides a waiver for the Contingent Deferred Sales Charge ("CDSC") to customers 59 1/2 years old and older to reduce the financial burden on individuals who have a legitimate need to receive cash for events beyond their control. Respondent further contended that Claimant is not entitled to this waiver because he was simply transferring the funds to Tucker Anthony Inc. Respondent asserted that it followed Claimant's instructions and committed no wrongdoing, and therefore, it should not be held liable in this matter.

RELIEF REQUESTED

Claimant James J. Tiernan, requested \$7,310.64 in actual damages.

Respondent Dean Witter Reynolds Inc., 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, Peter J. Dale, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant James J. Tiernan on August 23, 1995 and by the Respondent Dean Witter Reynolds Inc. on December 8, 1995.

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. The claims of the Claimant James J. Tiernan against Respondent Dean Witter Reynolds, Inc. are dismissed in their entirety as there was no liability found against the named Respondent.

2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc.

AFFIRMATION

I, **PETER J. DALE, ESQ.**, 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.



Peter J. Dale, Esq.

DATE OF DECISION: April 23, 1996