

9610078

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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Securities Dealers Inc.

In the Matter of the Arbitration Between

Name of Claimant

1996

Marie Owens

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95-05033

Name of Respondent

Dean Witter Reynolds, Inc.

REPRESENTATION

For Claimant: K. Michael Swarm, Esq. of the law firm of Snyderbum, Rishoi & Swarm, Winter Park, Florida.

For Respondent: George Sullivan, Esq., in-house counsel at Dean Witter Reynolds, Inc. Respondent: George

CASE INFORMATION

Statement of Claim filed: October 24, 1995.

Statement of Claim filed

Claimant's Submission Agreement signed on: October 18, 1995.

Claimant

Statement of Answer filed by Respondent on: January 3, 1996.

The Respondent did not execute a submission agreement as required pursuant to Section 25 of the Code of Arbitration Procedure.

HEARING INFORMATION

Five hearing sessions were conducted in this matter on June 19 and 20, 1996 and August 23, 1996 in Tampa, Florida.

SUMMARY

Claimant alleged that she was an unsophisticated investor and she informed the Respondent that her investment goal was to achieve a higher level of income while maintaining safety of principal. Claimant next alleged that her account executive recommended to her that she purchase four different mutual funds stating they were appropriate and suitable for her; however,

the account executive did not explain the nature of the risks associated with these funds; to Claimant or the fact that the objectives of these funds were not designed to produce income and he did not disclose the compensation that he and the Respondent would earn. Claimant next alleged that without the consent or approval of the Claimant the account executive allocated over 85 % of the value of Claimant's account to stock funds. Claimant further alleged that the account executive sold the Dean Witter proprietary funds without informing Claimant that these mutual funds could have been exchanged at no cost for other bond oriented mutual funds within the same family of funds and as a result, Claimant incurred substantial redemption fees and costs. Claimant next alleged that the misrepresentation and omission of material facts made by Dean Witter Reynolds, Inc. and the account executive to the Claimant and the sale of unsuitable investments by the Respondent has directly and proximately resulted in Claimant suffering trading losses, lost income, adverse tax consequences and improper and excessive fees and sales commissions. Claimant next alleged the Respondent breached the fiduciary duty owed to her, acted negligently in the handling of her account, breached the contract with Claimant and failed to adequately and properly supervise its account executive.

Respondent denied that it was liable to Claimant for any damages and denied that it violated any duty, obligation or responsibility owed to Claimant. Claimant maintained that all of the transactions which the Claimant effected in her account were suitable for her investment objectives and financial status and were entirely consistent with her expressed financial goals. Respondent next maintained that the Claimant was fully advised of the relative risks inherent in her investments and knowingly chose to assume those risks and all of the transactions were thoroughly discussed with her, were authorized by her, and were effectuated with her full knowledge and consent. Respondent next maintained that the Claimant never made a complaint until 1995 and the Claimant has ratified and approved the subject transactions. Respondent next maintained that no misrepresentations or omissions of a material fact have ever been made by Dean Witter Reynolds, Inc. concerning the investment transactions at issue and the Claimant was thoroughly advised of all pertinent aspects of the investment transactions. Respondent next maintained that extraordinary market conditions and events not caused by or in control of Dean Witter Reynolds, Inc. may have existed to cause certain losses which have been alleged by the Claimant.

#### **RELIEF REQUESTED**

Claimant requested compensatory damages of \$103,300.00 plus punitive damages of \$309,900.00 together with interest from the date of her losses and all costs of the proceeding.

Respondent requested that all claims asserted by the Claimant be denied in their entirety.

#### **OTHER ISSUES CONSIDERED: E D**

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 the NASD.

**AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Respondent Dean Witter Reynolds, Inc. shall credit the Claimant's account in the sum of \$1,873.00 representing margin interest.
2. All other claims by the Claimant against the Respondent are dismissed in all respects.
3. The Claimant's request for punitive damages is denied.
4. Each party shall bear their respective costs including attorneys' fees.

**FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$3,750.00 (5 sessions x \$750.00).

1. Claimant is hereby assessed \$1,875.00 for which the NASD shall retain the \$750.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$1,125.00.
2. Respondent is hereby assessed \$1,875.00.
3. The NASD shall retain the \$200.00 non-refundable filing fee previously paid by the Claimant to the NASD.

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

**Concurring Arbitrators' Signatures**

Name

Public/Industry

/s/

Paul Sidney Elliott, Esq.

Public/Chairman

/s/

Neal J. Tourdo

Industry

/s/

Patricia A. Gunn

Public

Date of Decision: October 1, 1996