

AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

W. Michael Robertson

and

Case Number 95-05987

Names of Respondents

Dean Witter Reynolds, Inc.,
Scott Curren,
Cindy S. Bartley and
Paul Hughston

REPRESENTATION OF PARTIES

Claimant W. Michael Robertson was represented by Bradley Whalen, Esquire of Doyle, Rider, Restrepo, Harvin & Robbins, L.L.P. and Edward Crain, Esquire of Westmoreland & Crain, both located in Houston, Texas.

Respondents Dean Witter Reynolds, Inc., Cindy S. Bartley and Scott Curren were represented by Coyt Randal Johnston, Esquire and Robert Tobey, Esquire of Johnston & Budner, Esquire located in Dallas, Texas and by Erica Bunin, Esquire of Dean Witter Reynolds, Inc. located in New York, New York.

Respondent Paul Hughston was represented by Martin Lowy, Esquire located in Dallas, Texas.

CASE INFORMATION

The Statement of Claim was filed on or about December 20, 1995.

The Amended Statement of Claim was filed on or about December 26, 1996.

The Submission Agreement of Claimant W. Michael Robertson was signed on December 20, 1995.

Respondents Dean Witter Reynolds, Inc., Cindy S. Bartley, Scott Curren and Paul Hughston's Joint Statement of Answer and Counter-Claim was filed on or about February 20, 1996.

Respondent Dean Witter Reynolds, Inc.'s Submission Agreement was signed on February 14, 1996 by Erica Bunin, First Vice President and Assistant General Counsel.

Respondent Cindy S. Bartley's Submission Agreement was signed on February 15, 1996.

Respondent Scott Curren's Submission Agreement was signed on February 15, 1996.

Respondent Paul Hughston's Submission Agreement was signed on February 15, 1996.

Claimant W. Michael Robertson's Response to the Counter-Claims was filed on or about November 15, 1996.

HEARING INFORMATION

Pre-hearing conferences before three arbitrators were held on the following dates:

- November 13, 1996 for one (1) session; and
- January 7, 1997 for one (1) session.

The hearing was held on the following dates:

- January 14, 1997 for two (2) sessions;
- January 15, 1997 for two (2) sessions;
- January 16, 1997 for two (2) sessions; and
- January 17, 1997 for two (2) sessions.

Hearing location: -Houston, Texas.

CASE SUMMARY

W. Michael Robertson ("Claimant") made allegations against Dean Witter Reynolds, Inc. ("Dean Witter") and its employees, Scott Curren ("Curren"), Cindy S. Bartley ("Bartley") and Paul Hughston ("Hughston") (hereafter collectively referred to as "Respondents"), of defamation, intentional interference with business relations, contractual relations and prospective economic advantage and intentional infliction of emotional distress. Claimant was employed by Dean Witter

as a Senior Vice President from January of 1981 until termination in November of 1994. As alleged, Claimant was a top producer as well as a prominent speaker and instructor for Dean Witter having spent several weeks per year giving lectures on managed money and is recognized as an expert in the field. In the Spring of 1994, Claimant agreed to speak at a Fall Conference of the Association of Excellence in Colorado, pending the receipt of certain information from the Association and approval by Dean Witter. Since Claimant had not received the required information prior to the conference, Claimant allegedly advised the President of the Association, Michael McAllaster ("McAllaster"), a few days before the conference that he could not give a presentation on managed money. When Claimant arrived at the conference in September of 1994, he gave brief opening remarks to the participants at the urging of McAllaster who had listed Claimant as a speaker in the conference program without Claimant's knowledge or authorization. Claimant allegedly left the conference immediately after he spoke, did not accept a fee yet was reimbursed by the Association for his travel and lodging costs. In October of 1994, when Curren allegedly questioned Claimant's involvement at the conference, Claimant invited Curren to contact McAllaster for confirmation. On or about November 21, 1994, Curren informed Claimant that he had received a wire authorizing him to terminate Claimant for speaking for a fee, without prior approval, at the conference. Claimant allegedly prepared a written memorandum on November 22, 1994 regarding the conference at the request of Curren. According to the Claimant, he tendered a notice of resignation to Curren on November 25, 1994 but Curren refused to accept the resignation instructing Claimant to leave the office and to not work over the weekend. Curren allegedly terminated Claimant on November 28, 1994 while Dean Witter reported on Claimant's Uniform Termination Notice (Form U-5) that he was discharged for engaging in an "outside speaking activity for a fee without Dean Witter permission". Claimant conceded that he gave opening remarks without approval yet claimed that his termination was motivated by other reasons. Claimant contended that following his termination the Respondents were misrepresenting the events concerning his termination and were making defamatory remarks about him to his clients and the public at large regarding his fitness, integrity and performance as a financial consultant. Claimant further contended that Dean Witter refused to return his valuable personal property including computer software worth at least \$14,000. Claimant allegedly notified Dean Witter through his counsel on December 8, 1994 of a pattern of defamation of Claimant by Dean Witter employees yet Respondents continued to make defamatory oral and written remarks. Claimant alleged that Dean Witter and its agents misrepresented the facts concerning Claimant's termination and made defamatory statement to Claimant's clients to discourage them from continuing to rely upon Claimant as their financial consultant, injuring Claimant's business, personal reputation and client base.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that Claimant was fired for violation of the firm's policy. Respondents claimed that Claimant had a history of compliance and personal problems and his conduct caused disruption and mistrust in the office. In their Counter-Claim, Respondents contended that they suffered damages as a result of Claimant making false and defamatory statements to customers about them and due to Claimant's tortiously interfering with the contractual agreements between Dean Witter and its customers.

Respondents asserted the following affirmative defenses:

1. All statements made by Respondents about Claimant were true. Therefore, Claimant's claims for defamation were barred.
2. Any statements made by Respondents about Claimant were privileged, because they were made in furtherance of Respondents' legitimate business interests.
3. Any statements made by Dean Witter on Claimant's Form U-5 were privileged in that they were made in furtherance of a quasi-judicial process administered by the New York Stock Exchange.
4. Claimant's claims were barred in whole or in part by the applicable statutes of limitation.

RELIEF REQUESTED

Claimant requested an award in the amount of at least \$2,000,000 in actual damages; \$580,000 in special damages; damages for mental anguish in an undisclosed amount; exemplary damages in an undisclosed amount; pre-judgement interest; post-judgement interest; and costs.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded costs and attorneys' fees. Respondents also requested indemnification on all sums incurred by Dean Witter as a result of action brought by customers relating to out-of-pocket payments for awards or settlements, attorneys' fees, arbitration and court costs.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains on file with the NASD Regulation, Inc. Office of Dispute Resolution.

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. Respondent Dean Witter Reynolds, Inc. is hereby liable for and shall pay to Claimant W. Michael Robertson the amount of \$400,000 in special damages;

2. Respondent Dean Witter Reynolds, Inc. is hereby liable for and shall pay to Claimant W. Michael Robertson the sum of \$165,000 in exemplary damages;
3. Respondent Scott Curren is hereby liable for and shall pay to Claimant W. Michael Robertson the sum of \$25,000 in exemplary damages;
4. Respondent Cindy S. Bartley is hereby liable for and shall pay to Claimant the amount of \$50,000 in exemplary damages;
5. Respondent Paul Hughston is hereby liable for and shall pay to Claimant W. Michael Robertson the sum of \$60,000 in exemplary damages. In determining to award exemplary damages, the arbitrators considered the pleadings, the evidence and the testimony provided by the parties;
6. The parties shall bear their own costs including attorneys' fee except for forum fees which are specifically addressed below;
7. The Counter-Claim of Respondents Dean Witter Reynolds, Inc., Scott Curren, Cindy S. Bartley and Paul Hughston is hereby denied in their entirety; and
8. Any relief not specifically granted herein is hereby denied in its entirety.

FORUM FEES

Forum fees are calculated at the rate of \$1,000 per hearing session. There were ten (10) sessions x \$1,000 = \$10,000 in forum fees. Pursuant to Section 10205(b) of the Code of Arbitration Procedure (the "Code"), 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 Section 10205(c) of the Code, the National Association of Securities Dealers Regulation, Inc. ("NASD Regulation, Inc.") 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 \$1,000 previously deposited with the NASD Regulation, Inc. by Claimant W. Michael Robertson.

Pursuant to Section 10205(c) of the Code, Respondent Dean Witter Reynolds, Inc. is hereby liable for and shall pay to Claimant W. Michael Robertson the sum of \$1,500 is reimbursement of the filing fee and hearing session deposit. Respondent Dean Witter Reynolds, Inc. is hereby liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$9,000 in additional forum fees. Respondent Dean Witter Reynolds, Inc. is also liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the filing fee in the amount of \$500 for the Counter-Claim.

Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

Signed:

Dated:

L.E. Machin
L.E. Machin
Public Arbitrator, Chairperson

February 21, 1997

Sherry R. Wetsch, Esquire
Sherry R. Wetsch, Esquire
Public Arbitrator

February 21, 1997

Jeffrey M. Aboloff
Jeffrey M. Aboloff
Industry Arbitrator

February 21, 1997

Date served by the NASD Regulation:

February 21, 1997