

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Logue Revocable Trust

95-05989

Name of Respondents

Dean Witter Reynolds Inc.  
Dennis Oliveira

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**REPRESENTATION**

For Claimant: Norman Meyers, Esq. of the law firm of Meyers & Bierkan, P.A., Sun City Center, Florida.

For Respondent: James D. Yellen, Esq., in-house counsel at Dean Witter Reynolds, Inc.

**CASE INFORMATION**

Statement of Claim filed: December 21, 1995.

Claimant's Submission Agreement signed on: December 14, 1995.

Joint Statement of Answer filed by Respondents on: February 6, 1996.

Respondent Dean Witter Reynolds, Inc's Submission Agreement signed on: April 6, 1996.

Respondent Dennis Oliveira did not execute a Submission Agreement as required pursuant to Section 10314 of the Code of Arbitration Procedure.

**HEARING INFORMATION**

One hearing session was conducted in this matter on December 3, 1996 in Tampa, Florida.

**CASE SUMMARY**

Claimant alleged that Dean Witter Reynolds, Inc, through its account executive, Dennis Oliveira, induced Claimant into purchasing unsuitable securities on margin, specifically, Borden Ltd.

Partnership Units, and a short time later advised Claimant to sell the issue after it had declined significantly. Claimant next alleged Claimant's assets were put at risk without his knowledge and against his stated objectives of protection of principal (safety) consistent with income. Claimant next alleged that Mr. Logue was not familiar with trading on margin, had never used it, and was unfamiliar with the risks he would be subjected to. Claimant next alleged that Mr. Logue has been retired since 1984 and made it explicitly clear that he could not afford to take risks as he could not replace any lost principal.

Claimant next alleged that Dean Witter Reynolds, Inc was grossly negligent in supervising Mr. Oliveira. Claimant alleged that they possessed the power to direct the practices, activities and policies of their account executive, who was employed at Dean Witter Reynolds, Inc. as a registered representative, and either condoned his actions or failed to properly supervise or even exercise the slightest care to prevent his actions. Claimant alleged, therefore, that Respondent Dean Witter Reynolds, Inc. is vicariously liable to Claimant because Mr. Oliveira is their employee, and Dean Witter Reynolds, Inc. is a "controlling person" under Section 20(a) of the Securities Exchange Act of 1934. Claimant next alleged that Mr. Logue, a 71 year old retiree, has suffered financial losses because of the egregious misconduct by the Respondents.

Respondents generally denied the material allegations set forth in the Statement of Claim and maintained that they made no misrepresentations to Claimant concerning the disputed investment at the time the investment was made or thereafter. Respondents further maintained that they did not induce Claimant into making the disputed investment, rather they explained to Claimant the risks and Claimant decided to make the purchase. Respondents next maintained that Claimant had made previous purchases on margin and clearly instructed his account executive to make the purchase on margin. Respondent Dean Witter Reynolds, Inc. next maintained that it was not negligent in its supervision of Mr. Oliveira and there is no substantiation whatsoever for the allegation that Dean Witter Reynolds, Inc. failed to properly supervise Mr. Oliveira. Respondents next maintained that Respondent Dennis Oliveira did not act improperly while employed by Dean Witter Reynolds, Inc. or at any prior time and the trading in Claimant's account was suitable in light of Claimant's investment objectives and financial status. Respondents next maintained that the Claimant's purported damages fail to account for various distributions paid out to Claimant while he held the units at issue.

#### **RELIEF REQUESTED**

Claimant requested the following relief in the Statement of Claim:

- (a) Compensatory damages and pre-judgment interest totalling \$4, 982.65, plus the income the account should have realistically earned;
- (b) Margin interest of \$1, 672.92;
- (c) Commission disgorgement of \$951.14, plus costs and fees of this action;
- (d) A reasonable attorney's fee pursuant to Section 517.211(6) Fla. Stat.,
- (e) Punitive damages in the sound discretion of the Arbitrator; and,
- (e) Such other relief as the Arbitrator finds appropriate under the circumstance.

Respondents requested that the claim be dismissed in its entirety and that costs and attorneys' fees be assessed against the Claimant.

### 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:

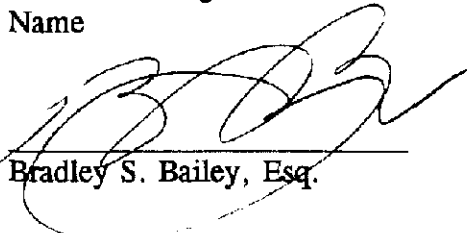
1. The Respondents be and hereby are liable, jointly and severally, and shall pay to the Claimant the sum of \$2,491.33, inclusive of pre-judgment interest.
2. The Claimant's request for punitive damages is denied.
3. Each party shall bear their respective costs including attorneys' fees.
4. The Respondents be and hereby are liable, jointly and severally, and shall pay to the Claimant the sum of \$137.50 representing reimbursement of the filing fees previously paid by the Claimant to the NASD.

### FORUM FEES

Pursuant to Section 10314 of the Code of Arbitration Procedure, the NASD shall retain the \$75.00 claim filing fee and \$200.00 hearing session deposit previously paid by the Claimant to the NASD.

Arbitrator's Signature  
Name

Public/Industry

  
Bradley S. Bailey, Esq.

Public

Date of Decision: 12/3/96