

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Salvatore Izzo, Jr., Individually  
and as Custodian of the Salvatore  
Izzo, Jr., IRA

95-06086

Name of Respondents

Dean Witter Reynolds, Inc.  
James W. Hughes

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**REPRESENTATION**

For Claimants: Richard W. Groner, Esq. of Groner & Schieb, Tampa, FL.

For Respondents: James D. Yellen, Esq. corporate counsel for Dean Witter Reynolds, Inc. ("Dean Witter"), New York, NY.

**CASE INFORMATION**

Statement of Claim filed: December 29, 1995.

Claimants' Submission Agreement signed on: December 22, 1995 by Salvatore Izzo, Individually and as Custodian of the Salvatore Izzo, Jr., IRA.

Joint Statement of Answer filed by Respondents, Dean Witter and James W. Hughes ("Hughes") on: March 8, 1996.

Statement of Answer filed by Respondent Hughes on: March 20, 1996.

Respondent, Dean Witter's Submission Agreement signed on: June 6, 1996 by James D. Yellen on behalf of the firm.

Respondent, Hughes' Submission Agreement signed on: March 15, 1996.

**HEARING INFORMATION**

On November 26, 1996, in Tampa, FL, a hearing lasting two sessions was conducted.

### **CASE SUMMARY**

Claimants alleged that Hughes, while working as a broker with Dean Witter, solicited the Claimant Salvatore Izzo, Jr. to purchase a limited partnership (40 units of Parker & Parsely 90-C-LP) for his retirement account. Claimants further alleged that Hughes misrepresented the risks of the investment in the limited partnership, and therefore, was successful in selling an unsuitable limited partnership into the Claimants' IRA account, which thereafter declined in value by a substantial amount. Claimants asserts that Dean Witter is also responsible for these losses pursuant to the doctrine of *respondeat superior*. In addition, Claimants alleged, that after Hughes left Dean Witter, he again solicited and sold an unsuitable limited partnership (20 units Ceres Fund, L.P.) to Claimants in which the product suffered impaired capital, and failed to distribute income as represented by Hughes. The Claimants further alleged the violation of the following legal theories: breach of fiduciary duty; breach of Respondents' duty of fair trading and honest dealing; negligent misrepresentation, and negligent supervision; and violation of the Florida Securities and Investor Protection Act.

Respondents, in their Joint Statement of Answer, generally denied the material allegations set forth in the Statement of Claim and alleged the following: there were no misrepresentations regarding the risks of the units of Parker & Parsley or the Ceres Funds L.P.; that prospectuses were sent to Claimants regarding these investments which set forth the risk factors inherent to the investments; the subsequent decline in value of the investments was due to market forces and not attributable to any acts of the Respondents; Respondents did not breach any duties of fair trading, honest dealing, or any of the other legal theories alleged by Claimants; Dean Witter denies that it was negligent in the supervision of Hughes; Hughes denies any allegations that he acted improperly with respect to Claimants' account while employed by Dean Witter; and, Claimants' claims are barred in whole or in part by applicable eligibility periods or statutes of limitation. In addition, Hughes in his individual Statement of Answer, alleged that the Statement of Claim was not based on fact and that the Claimants' assertions are devoid of merit and are without foundation.

### **RELIEF REQUESTED**

Claimants requested actual compensatory damages in the minimum of \$32,000.00, interest, costs and attorneys fees.

Respondents requested that the claim be dismissed and that costs be assessed against Claimants.

### **OTHER ISSUES CONSIDERED & DECIDED**

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 originals remain on file with the NASD.

### 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) Respondents, Dean Witter Reynolds, Inc. and James W. Hughes, are found liable, jointly and severally, and shall pay to the Claimants the amount of \$10,000.00.
- 2) Claimants' requests for pre-judgement interest, costs and attorneys fees are hereby denied.
- 3) Respondent's request for costs is hereby denied.
- 4) Respondent, Dean Witter, shall reimburse the Claimants \$120.00 for the non-refundable filing fee and \$400.00 for the hearing session deposit, for a total due to the Claimants of \$520.00.

### FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$800.00 (two hearing sessions x \$400.00).

Respondent, Dean Witter, is assessed the sum of \$800.00, for which the NASD shall retain the \$400.00 previously deposited by Claimant in partial satisfaction thereof, leaving a balance due to the NASD of \$400.00.

The NASD shall retain the non-refundable filing fee of \$120.00 paid by the Claimant.

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

#### Concurring Arbitrators' Signatures

Name

Public/Industry

/s/

Public

George S. Coit, Jr., Esq.

/s/

Robert P. Schwartz

Industry

/s/

Paul E. Flora

Public

January 21, 1997

Date of Decision: \_\_\_\_\_