

**N.A.S.D. AWARD****NASD Regulation, Inc. Office of Dispute Resolution****In the Matter of the Arbitration Between****Name of Claimants**

Robert L. Faxon and Glenda L. Faxon

NASD CASE NO. 96-00034

**Name of Respondents**

Dean Witter Reynolds Inc.  
and Charles H. Reynolds

**REPRESENTATION**

For Claimants: Thomas F. Shine, Esq., Melbourne, Florida and Stephen T. Gannon, Esq. of LeClair Ryan, Richmond, Virginia.

For Respondents: Bradford D. Kaufman, Esq. and Anne Tennant Cooney, Esq. of Steel Hector & Davis LLP, West Palm Beach, Florida.

**CASE INFORMATION**

Statement of Claim filed on January 3, 1996. Claimants' Submission Agreement signed on December 15, 1995.

Respondents' Answer and Affirmative Defenses filed on March 4, 1996. Respondent Dean Witter Reynolds Inc.'s Submission Agreement signed on April 8, 1996 by George D. Sullivan, First Vice President, Senior Attorney of Dean Witter Reynolds Inc. ("Dean Witter"). Respondent Charles H. Reynolds' Submission Agreement signed on April 1, 1996.

**HEARING INFORMATION**

On February 3, 1997, March 10, 1997 and March 24, 1997, telephonic pre-hearing conferences lasting one (1) session each were conducted with the arbitration panel (the "Panel"). On May 12, 1997, a telephonic pre-hearing conference lasting one (1) session was conducted with the Chairperson of the Panel. On July 7, 8, 9, 10 and 11, 1997 and February 13, 14, 16, 17 and 18, 1998, in Tampa, Florida, hearings lasting nineteen (19) sessions were conducted with the Panel.

**CASE SUMMARY**

Claimants (or the "Faxons") alleged the following: that during the period June 1991 through November 1992, Respondents Dean Witter and Charles H. Reynolds ("Reynolds") recommended unsuitable securities and strategies to the Faxons that were not consistent with their needs, financial situation and investment objectives; that the Claimants justifiably relied upon the recommendations and advice rendered by the Respondents in investing their assets held at Dean Witter; that Reynolds breached duties of loyalty,

care, utmost honesty and good faith in connection with the investment advice that he provided to the Claimants during the relevant period; that Reynolds' recommendations and advice were designed and did, in fact, promote Reynolds' economic self-interest to the detriment of the Claimants; that Reynolds' pursuit of economic self-interest and his severe personal financial problems that motivated his pursuit of economic self-interest were material facts that were required to be disclosed to the Faxons; that the above described acts, practices, courses of conduct and omissions violated federal and state securities laws, rules and regulations, industry standards and Dean Witter's internal rules; and, that same specifically constituted violations of the Florida Securities and Investor Protection Act and the Florida Civil Theft Statute, a breach of fiduciary duty, common law fraud, negligence and a breach of contract.

Respondents denied all allegations of wrongdoing contained in the Statement of Claim and maintained that the Claimants were wealthy investors who were repeatedly apprised of market risks and wanted to aggressively trade with a portion of their Dean Witter portfolio. Respondents further maintained that all of the options and commodities transactions, and a majority of the stock trades, at issue were done on an unsolicited basis by Robert Faxon, who had a graduate business degree and access to extensive information regarding investment markets. Respondents also asserted that all of the transactions in Claimants' Dean Witter accounts were suitable for Claimants' investment objectives and financial status and were entirely consistent with the Claimants' expressed financial goals. Respondents further asserted that by Claimants' numerous discussions with Reynolds, their written and verbal authorizations and instructions to proceed with the transactions at issue, and their failure to complain after receiving confirmations and account statements, the Claimants ratified and approved of all transactions at issue.

#### RELIEF REQUESTED

Claimants requested: (1) compensatory damages in the amount of \$463,785.00 plus \$241,168.20 in simple interest calculated at the Florida statutory rates over the five year period from 1992 through 1997 (12% through 1994, 8% in 1995, 10% in 1996 and 1997); (2) \$608,215.00 in lost income allegedly resulting from the Respondents' recommendation to sell the Sears tax exempt municipal bond trust; (3) punitive damages in an amount to be determined by the arbitrators; (4) that the Respondents pay the Claimants' attorneys' fees and expert witness fees in the sum of \$40,070; and, (5) that the Respondents pay all hearing session fees.

Respondents requested that the relief requested by the Claimants be denied in its entirety and that the Statement of Claim be dismissed in its entirety, and that the Claimants be assessed all forum fees.

#### 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 NASD Regulation, Inc.

During the evidentiary hearing of this matter, Respondents moved for the imposition of sanctions against the Claimants for their conduct with respect to discovery. The Panel denied the Respondents' motion.

#### AWARD

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

1. Claimants' Statement of Claim is dismissed in its entirety.

2. All other claims for relief, including the Claimants' requests for punitive damages, attorneys' fees and expert witness fees, are denied.

### FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure (the "Code"), the Panel has assessed forum fees in the amount of \$22,300.00 (19 sessions x \$1,000.00 per session, plus 3 pre-hearing conferences with the Panel x \$1,000.00 and 1 pre-hearing conference with the Chairperson x \$300.00) as follows:

1. The Claimants are hereby assessed the sum of \$11,150.00, for which NASD Regulation, Inc. shall retain the \$700.00 hearing session deposit previously paid by Claimants in partial satisfaction thereof, leaving a balance due in the amount of \$10,450.00.
2. The Respondents are hereby assessed, jointly and severally, the sum of \$11,150.00.
3. Respondent Dean Witter is also liable and shall pay to NASD Regulation, Inc. the sum of \$750.00 representing the fee for the postponement of the April 1 - 3, 1997 scheduled hearing dates.

### OTHER FEES

Pursuant to Rule 10332(a) of the Code, the Claimants have paid to NASD Regulation, Inc. the \$250.00 claim filing fee.

Pursuant to Rule 10333 of the Code, Respondent Dean Witter has paid to NASD Regulation, Inc. the \$350.00 member surcharge previously invoiced.

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

Concurring Arbitrators' Signatures

Public/Industry

\_\_\_\_\_/s/\_\_\_\_\_  
Arthur L. Sirkin, Esq.  
Chairperson

Public

\_\_\_\_\_/s/\_\_\_\_\_  
Richard I. Funkey

Public

Dissenting Arbitrator's Signature

\_\_\_\_\_/s/\_\_\_\_\_  
Joseph E. Meyer

Industry

Date of Decision: August 3, 1998