

NASD REGULATION AWARD
NATIONAL ASSOCIATION OF SECURITIES DEALERS

Name of Claimant

Bruce MacEwen

96-00261

Name of Respondent

Dean Witter Reynolds Inc.

REPRESENTATION

For claimant Bruce MacEwen ("claimant") appeared Sonya Kaloyanides, Esq. of the law firm of McLaughlin & Stern, LLP, located in New York, New York.

For respondent Dean Witter Reynolds Inc. ("respondent") appeared Vincent J. LaGreca, Esq., First Vice President and Assistant General Counsel of Dean Witter Reynolds Inc.

CASE INFORMATION

Statement of Claim was filed on January 16, 1996. Claimant's Submission Agreement was signed on January 15, 1996.

Statement of Answer was filed on March 15, 1996. Respondent's Submission Agreement was signed on March 15, 1996.

HEARING INFORMATION

Pre-hearing conferences:	September 11, 1996	-	Full panel
	October 9, 1996	-	One Arbitrator
Hearing Sessions/Dates:	October 21, 1996	-	Two Sessions
	October 22, 1996	-	Two Sessions
	December 9, 1996	-	Two Sessions

The pre-hearing conference on September 11, 1996 was held at the City Midday Club located at 140 Broadway, New York, New York. The pre-hearing conference on October 9, 1996 was conducted via telephone conference. The hearings remaining hearings in this matter were held at the offices of the National Association of Securities Dealers located in New York, New York.

CASE SUMMARY

Claimant alleged that, in or about January 1986, respondent recruited him to leave his position with a major New York law firm and join respondent's Law Department as a Vice President and securities litigator. Claimant further alleged that, in or about 1989, he was promoted to First Vice President and Advisory Attorney and he was responsible for providing strategic and legal advice to many areas of the firm, including marketing, equities, fixed income, research, operations and compliance.

Claimant maintained that respondent's administrative policy manual stated that an involuntary termination for personal inadequacy should be supported by written warnings given to the employee prior to the termination and required that, before an employee is terminated, a verbal interview be held, followed by a written statement outlining the exact performance deficiencies and offering the employee an opportunity to remedy them. Claimant further maintained that respondent's express employment policies provided for severance pay based upon the length of service and pay for accrued but unused vacation.

Claimant alleged that, in or about the summer of 1993, respondent's General Counsel complained that he was "off the budget project", a role he had been performing for at least four years. Claimant also alleged that, beginning in or about June 1994, his supervisor had occasional conversations with him concerning respondent's General Counsel's displeasure with him, but that at no time did his supervisor or respondent's General Counsel advise him that his employment was in jeopardy nor did they ever identify the specific cause of the displeasure. Claimant contended that, without any prior notice, on June 5, 1995, his supervisor advised him that respondent's General Counsel intended to terminate him effective June 30, 1995. Claimant further contended that, on or about June 22, 1995, he met with respondent's General Counsel to discuss the reason for his termination but, according to claimant, no reason was articulated to him other than the General Counsel's own personal dissatisfaction with him.

Claimant alleged that respondent breached the express and implied terms of his employment by failing to give him prior written notice and an opportunity to correct the source of respondent's General Counsel's displeasure and by failing to give him severance pay. Claimant further alleged that his termination was without just and reasonable cause and that it was willful, arbitrary and capricious and made in bad faith for which he is entitled to punitive damages.

Respondent maintained that claimant was advised at least a year prior to his departure from Dean Witter that he should begin his search for employment elsewhere. Respondent further maintained that it extended every courtesy to claimant during this period, which included recommending a recruiting service, permitting claimant to leave work early to attend interviews and approving late arrivals. Respondent further contended that, in order to avoid blemishing claimant's permanent employment record, written critical reviews were suspended.

Respondent maintained that the employment application signed by claimant stated that his employment could be terminated at any time with or without notice and cause. Respondent also maintained that its employment manual also stated that an employee's employment could be terminated at any time with or without notice.

RELIEF REQUESTED

Claimant requested compensatory damages of \$225,000.00, punitive damages of \$225,000.00, interest, costs, attorney's fees and such other and further relief as seems just, proper and equitable.

Respondent requested that the Statement of Claim be dismissed and that it be awarded full costs.

OTHER ISSUES CONSIDERED AND DECIDED

On May 1, 1996, respondent filed a Motion to Dismiss the Statement of Claim. An in-person pre-hearing conference was held with the full panel on September 11, 1996. On September 25, 1996, the parties were advised that the panel had denied the motion to dismiss.

After the presentation of claimant's case, respondent renewed its motion to dismiss. The panel granted this motion and the parties were advised of the panel's decision on January 28, 1997.

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. All claims against respondent be and hereby are dismissed in their entirety.
2. Respondent's motion for costs is hereby denied.
3. Each party shall bear their respective costs, including attorneys' fees.
4. All other claims are denied.

FORUM FEES

Pursuant to Rule 10205(c) (formerly Section 44(c)) of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$500.00 non-refundable filing fee previously deposited by claimant and have assessed the following forum fees:

1 pre-hearing conference (one arbitrator)	= \$ 300.00
1 pre-hearing conference (full panel)	= \$ 750.00
6 hearing sessions x \$750.00	= \$4,500.00
Total forum fees	= \$5,550.00

Claimant be and hereby is liable for the sum of \$5,550.00, representing the total amount of forum fees assessed. Claimant previously deposited \$750.00, which shall be applied towards the total amount assessed. Therefore, claimant is liable and shall pay \$4,800.00 to the NASD.

Fees are payable to NASD Regulation, Inc.

Arbitrators' Signatures

Vicki Z. Holleman

Vicki Z. Holleman, Esq.
Chairperson-Industry Arbitrator

Harry J. Lundgren, Jr.
Industry Arbitrator

Judith C. Zerden, Esq.
Industry Arbitrator

Date of decision: January 28, 1997

I, **Vicki Z. Holleman, Esq.**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Vicki Z. Holleman

Vicki Z. Holleman, Esq.

Arbitrators' Signatures

Vicki Z. Holleman, Esq.
Chairperson-Industry Arbitrator



Harry J. Lundgren, Jr.
Industry Arbitrator

Judith C. Zerden, Esq.
Industry Arbitrator

Date of decision: January 28, 1997

I, Harry J. Lundgren, Jr., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.




Harry J. Lundgren, Jr.

Arbitrators' Signatures

Vicki Z. Holleman, Esq.
Chairperson-Industry Arbitrator


Harry J. Lundgren, Jr.
Industry Arbitrator



Judith C. Zerden, Esq.
Industry Arbitrator

Date of decision: January 28, 1997

I, Judith C. Zerden, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Judith C. Zerden, Esq.