

AWARD

**NASD, Regulation, Inc.,
Office of Dispute Resolution**

In the Matter of the Arbitration Between

Melvin Mogulof
Mildred Mogulof

Claimants

NASD Regulation, Inc.
No. 96-00314

v.

Dean Witter Reynolds, Inc.
Linda Poole

Respondents

REPRESENTATION OF PARTIES

Melvin Mogulof and Mildred Mogulof ("Claimants") were represented by Melvin Mogulof pro se.

Dean Witter Reynolds, Inc. and Linda Poole ("Respondents") were represented by Wendy Robinson, Esq., Dean Witter Reynolds, Inc., San Francisco.

CASE INFORMATION

Claimant's Statement of Claim was filed on or about January 17, 1996. The notarized Submission Agreement for Melvin Mogulof was signed on January 17, 1997. The non-notarized Submission Agreement for Mildred Mogulof was signed on January 17, 1997.

The Joint Statement of Answer for Dean Witter Reynolds, Inc. and Linda Poole was filed on or about March 20, 1996. The Submission Agreement for Dean Witter Reynolds, Inc. was signed on March 20, 1996. The Submission Agreement for Linda Poole was signed on March 20, 1996.

HEARING INFORMATION

A pre-hearing conference was held on May 6, 1996, which lasted one session.

The hearing was held on the following dates:

January 7, 1997	two sessions;
January 23, 1997	one session.

CASE SUMMARY

Claimants seek a variety of damages for alleged occurrences of wrongdoing following a settlement of a previous claim with the Respondent. Additionally, the Claimant's seek damages for fees associated with the termination of the relationship with the Respondent. The Claimant's further seek damages for all financial consequences resulting from the alleged wrongdoing by the Respondent including but not limited to increased tax liabilities and punitive damages.

Respondent denied the allegations set forth in the Statement of Claim. The Respondent specifically argues that the Claimant released all claims regarding the 1035 transfer issue pursuant to the signed settlement agreement resulting from the prior claim. The Respondent further argues that the bonds transferred to another firm at the Claimant's request were FGIC insured. Additionally, the Respondent argues that the interest charges were calculated in accordance with the prior settlement agreement and that any additional reimbursement for fees and charges is inappropriate.

RELIEF REQUESTED

1. The Claimants request an award ordering substitution of FGIC insured bonds purchased at Dean Witter Reynolds for the uninsured bonds transferred in their name to another firm.
2. The Claimants request an award in the amount of \$222.79, representing inappropriate charges and lost interest.
3. The Claimants request an award of \$10.40 representing one day's interest on the previous settlement agreement.
4. The Claimants seek a post facto 1035 transfer of the variable annuity from Northbrook to TIAA or in the alternative, the Claimant's request an unspecified award in an amount equal to the increased tax liabilities suffered by the Claimants for Dean Witter Reynolds' handling of said transfer.
5. Claimants request unspecified punitive damages.

Respondent requested that the claims asserted against it be denied in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

The Respondent moved to dismiss Linda Poole from the matter. Subsequent to pre-hearing argument on Respondent's Motion to Dismiss, Linda Poole was dismissed from the case by the undersigned arbitrator.

Claimants request for relief for the transfer of non-FGIC insured bonds was withdrawn.

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 NASD Regulation, Inc., Office of Dispute Resolution.

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. Claimants are awarded and Respondents shall pay to Claimants the sum of \$50.00;
2. Claimants request for \$10.40 in interest is denied;
3. Claimants request for a post-facto transfer or in the alternative damages equal to the increased tax liabilities suffered by the Claimants is denied;
4. Claimants request for punitive damages is denied. Although the handling of the account did not serve the best interests of customer service, it did not rise to the level of negligent or egregious conduct needed to award punitive damages;
5. All other claims by the Claimants are denied.

FORUM FEES

Forum fees are calculated at the rate of \$100 per hearing session or pre-hearing conference. There were 3 hearing sessions x \$100 plus 1 pre-hearing session x \$100 = \$400 in forum fees. Pursuant to §43(b) of the NASD Regulation, Inc., Office of Dispute Resolution 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 § 43(c) of the Code of Arbitration Procedure, the Respondent Dean Witter Reynolds, Inc. is assessed all forum fees.

Total Fees	
3 Hearing Sessions @ \$100.00 =	\$300.00
1 Pre-Hearing Conf. @ \$100.00 =	\$100.00
Total	<u>\$400.00</u>

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Pursuant to §43(e) of the Code, NASD Regulation, Inc. shall retain the non-refundable filing fee in the amount of \$50 and shall refund the hearing session deposit in the amount of \$100 previously paid to NASD Regulation, Inc. by the Claimant Melvin Mogulof an Mildred Mogulof.

Pursuant to §45 of the Code, the NASD shall retain the member surcharge fee in the amount of \$100 previously paid by Dean Witter Reynolds, Inc.

Fees are payable to the NASD, Regulation, Inc.

Dated:

Nancy Hutt
Nancy Hutt, Esq.
Public Arbitrator, Presiding Chair

February 13, 1997

DATE SERVED: FEBRUARY 13, 1997