

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Leroy N. Miller & Suree G. Miller Trust

96-00390

Name of Respondents

Dean Witter Reynolds Inc.
Philip Bresnick
Susan N. Dandridge
Timothy J. Walsh

CASE SUMMARY

In a case filed with the National Association of Securities Dealers Regulation, Inc. on January 26, 1996, claimants Leroy and Suree Miller, as Trustees for the Miller Trust ("claimant") who appeared Pro Se, alleged that respondents Dean Witter Reynolds, Inc. ("Dean Witter"), Philip Bresnick ("Bresnick"), Susan Dandridge ("Dandridge"), and Timothy Walsh ("Walsh") delayed executing their instruction in liquidating variable priced mutual funds. Claimants further alleged that on January 21, 1994 their broker and son E. Scott Miller ("Scott") left Dean Witter and took a similar position with Smith Barney Shearson. Claimants also alleged that on January 28, 1994 and February 2, 1994 they authorized Scott to request liquidation of two mutual funds TCW/DW North American Government Income Trust ("TNORA") and Dean Witter California Tax Free Income Fund ("CATAX"). Claimants asserted that they were aware that Dean Witter had accepted similar orders from Scott on behalf of other family members on January 27, 1994 and February 3, 1994. Claimant further asserted that Dean Witter never gave an indication to Scott or them that these orders were invalid or would not be accepted.

Claimants further asserted that on February 9, 1994 Scott was informed by Dean Witter that their liquidation instructions had not been carried out. Claimants contended that respondent Dandridge, the broker newly assigned to their account, was advised by respondent Bresnick to disregard the orders. Claimants further contended that on February 10, 1994, they contacted Dean Witter's Branch Manager Walsh, who saw to it that their orders were executed. Claimants contended that as a result of not executing the orders, they suffered a loss of \$1,419.89. Claimants alleged that respondents violated NASD Rules of Fair Practice by not informing them of their decisions to invalidate the orders Scott placed on their behalf. Claimants also alleged that had they been informed of the restriction precluding Dean Witter from accepting their orders through Scott, they would have immediately called in the orders themselves, as they did on February 10.

Respondents Dean Witter, Bresnick, Dandridge and Walsh (collectively referred to as "respondents") through their representative, Dean Witter in-house counsel Darcy Gomez, maintained that on January 28, 1994, Scott left a message with Dandridge's Sales Assistant Cindy Peterson ("Peterson") requesting that all shares of TNORA and CATAX held in the claimants' trust be liquidated. Respondents further maintained that when Peterson relayed the message to Dandridge, the conversation was overheard by acting Branch Office Manager Bresnick, who informed Dandridge that claimants never authorized anyone to place orders in their account. Respondents also maintained that Scott certainly knew this fact and also knew that what he was doing was improper.

Respondents contended that on February 2, 1994, Scott telephoned respondent Dandridge and asked her to liquidate the TNORA and CATAX shares in the claimants' trust and chastised her for not having done so already. Respondents further contended that Dandridge told Scott that she could not accept any orders from him for the claimants' trust, absent written authorization from his parents, and therefore required a direct order from claimants. Respondents also contended that Scott waited an entire week before telling claimants that they would have to place the sell orders themselves. Respondent maintained that on February 10, 1994 claimant Leroy Miller ("Dr. Miller") called and spoke with respondent Walsh, who explained to Dr. Miller that he had never given his son written authorization to place trades in their account and that since Scott was no longer an employee of Dean Witter, he had no control or authority over the account. Respondents further maintained that Walsh also told Dr. Miller that if he wished to place the sell order, it would be executed that day.

Respondents also maintained that even if Scott was still an Account Executive at Dean Witter, he was not authorized to effect any trades in the claimants' account without first receiving an instruction from claimant, and to do so would have resulted in an unauthorized trade. Respondents contended that the fact Scott managed to effect transactions without written authorization in other family members' accounts by circumventing Dean Witter's normal policies and procedures without immediate detection does not excuse his behavior nor can it form the basis for damages.

RELIEF REQUESTED

Claimants Leroy and Suree Miller, as Trustees for the Miller Trust, requested \$1,419.89 in actual damages.

Respondents Dean Witter, Walsh, Bresnick, and Dandridge requested that the claims of the claimants be dismissed in their entirety.

AWARD

Pursuant to Section 10302 of the Code of Arbitration Procedure, a single Public Arbitrator, Harvey Flodin was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the claimants Leroy and Suree Miller on July 15, 1996, by respondent Dean Witter Reynolds, Inc. on July 16, 1996, by respondent Philip Bresnick on July 2, 1996, by respondent Susan Dandridge on July 2, 1996 and by respondent Timothy Walsh on July 8, 1996.

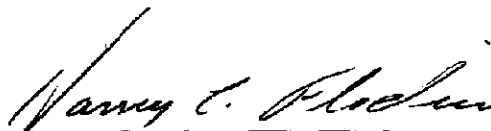
And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of the claimants Leroy and Suree Miller as Trustees for the Miller Trust against respondents Dean Witter Reynolds, Inc., Philip Bresnick, Susan Dandridge and Timothy Walsh are dismissed in their entirety.

2. The parties shall bear their respective costs.
3. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers Regulation, Inc. by the claimants shall be retained by the NASD Regulations, Inc.
4. All other relief requests are denied.

AFFIRMATION

I, **Harvey C. Flodin, Esq.**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Harvey C. Flodin, Esq.

Date of Decision: December 9, 1996