

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Rose T. Walleze Trust

96-00543

Name of Respondents

Dean Witter Reynolds Inc.
Edward D. Goddard

REPRESENTATION

For Claimant: Stephen Murphy, Esq. of the law firm of Pino & Dicks, Longwood, Florida.

For Respondents: Debra A. Roth, Esq., in-house counsel at Dean Witter Reynolds, Inc. ("Dean Witter").

CASE INFORMATION

Statement of Claim filed on: February 6, 1996.

Claimant's Submission Agreement signed on: February 14, 1996.

Joint Statement of Answer filed by Respondents on: March 23, 1996.

Respondent Dean Witter's Submission Agreement signed on: April 22, 1996.

Respondent Edward D. Goddard's ("Goddard") Submission Agreement signed on: March 25, 1996.

HEARING INFORMATION

Five hearing sessions were conducted in this matter on November 11 and 12, 1996, and March 14, 1997, in Tampa, Florida.

CASE SUMMARY

Claimant alleged that since 1972 when her first husband died, she saved money in certificates of deposit while using the income to support herself and her children. Claimant next alleged in 1984 Rose Walleze married Sam Walleze and continued to utilize certificates of deposit for income. Claimant further alleged in the fall of 1991, Sam Walleze asked his Dean Witter broker, Edward Goddard, to research other "zero risk alternatives" for Rose Walleze's certificates which were to mature in January of 1992 and in January of 1992, when the certificates matured, Rose Walleze rolled them over into new 5 year certificates. Claimant next alleged in February of 1992, Sam Walleze suffered a severe stroke and unsure as to whether Sam Walleze would survive, Rose Walleze contacted Edward Goddard to inform him that Sam Walleze was sick and to inform him that she might need to raise some additional cash in the event Sam Walleze passed away. Claimant next alleged shortly thereafter, while Sam Walleze was still in the hospital, Edward Goddard called Rose Walleze and recommended that she take an early withdrawal of her certificates of deposit, pay the early withdrawal penalty and invest the money in the Allstate Municipal Income Opportunity Trust II.

Claimant further maintained that Mr. Goddard told her that the Municipal Income Opportunity Trust would pay her a higher income than her certificates of deposit and at the same time it would also protect her principal in the same way as her certificates of deposit. Claimant next alleged that trusting Mr. Goddard's advice, Rose Walleze cashed in her certificates of deposit and transferred the money to Edward Goddard who purchased the Municipal Income Opportunity Trust II. Claimant next alleged later in 1992, Edward Goddard and Dean Witter advised Rose Walleze to make an additional Municipal Trust investment and purchase the Allstate Municipal Income Opportunity Trust and the Municipal Trusts sold by Edward Goddard were investments in medium grade municipal securities and the Municipal Trust investments involved substantially more risk than Rose Walleze's previous investments in certificates of deposit and were not suitable for Rose Walleze. Claimant next alleged after the Municipal Trusts declined in value and the income Rose Walleze expected to receive also declined she became nervous because she was accustomed to the security of certificates of deposit. Claimant next alleged that finally in 1994 the fluctuation in her income and the decline in her principal was causing her too much stress and she was forced to sell the Municipal Trusts at a loss and return the money to a certificate of deposit.

Respondents Dean Witter and Goddard maintained that Goddard was advised by Rose Walleze's husband that she had a certificate of deposit maturing in early 1992 and that Goddard was asked to research alternatives to certificates of deposit which would improve Claimant's yield. Respondents asserted that Goddard contacted Claimant on February 18, 1992 and suggested an investment in Municipal Income Opportunity Trust II, a closed end municipal bond fund and Respondent Goddard further maintained he explained the risks of this investment and said it was yielding 7.2% tax free. Respondents maintained when Mrs. Walleze said that she had already invested her rollover money in another certificate of deposit, Goddard explained the costs of giving up her certificate of deposit.

Respondents next maintained that no undue pressure was placed on Claimant because she had until February 28, 1992 to make up her mind about the investment and, on that day, she placed \$192,900.00 in the Municipal Income Opportunity Trust II. Respondent next maintained she later added to her holdings in the fund and purchased Municipal Income Opportunity Trust I because she was satisfied with the level of income she was receiving from the funds.

Respondents further maintained that during 1994, the value of the funds' shares fluctuated in response to the general declines experienced in the bond market when interest rates suddenly rose and despite Goddard's and Dean Witter's advice that she should hold on to her investment, which was intended to be long-term, Claimant decided to sell her shares in October of 1994, suffering the losses about which she has complained.

RELIEF REQUESTED

Claimant requested compensatory damages in the sum of \$137,500.00 for each of the claims set forth in the Statement of Claim including, but not limited to, rescissionary damages and all legal interest due and accruing on such damages under Chapter 517, Florida Statutes or the Well Managed Account Measure; pre-award and post-award interest from the date of the original investment, calculated at the maximum rate allowed by law; costs of arbitration, including all fees, expenses of expert witness, and other costs deemed fair and reasonable; attorneys' fees pursuant to Section 517.211(b), and the inherent power of the arbitrators to fully compensate Claimant by a "make-whole award"; and, punitive damages in an amount equal to three times the compensatory claim.

Respondents Dean Witter and Goddard requested dismissal of the claim in its entirety and an award of costs.

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 Edward Goddard are liable, jointly and severally, and shall pay to the Claimant the sum of \$26,272.00, inclusive of pre-judgment interest.
- 2) The Claimant's request for punitive damages is denied.

- 3) Each party shall bear their respective costs including attorneys' fees.

FORUM FEES

Pursuant to Section 10332(c) of the Code of Arbitration Procedure, the arbitration panel has assessed Forum Fees in the amount of \$3,750.00 (\$750.00 X 5 hearing sessions).

The Claimant is assessed \$1,875.00 for which NASD Regulation shall retain the \$750.00 previously deposited in partial satisfaction thereof leaving a balance due in the sum of \$1,125.00.

The Respondents are assessed, jointly and severally, the sum of \$1, 875.00.

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

Concurring Arbitrators' Signatures

Name	Public/Industry
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<u>/S/</u>	
David A. Townsend, Esq.	

<u>/S/</u>	
James T. Deveaney, Esq.	

<u>/S/</u>	
Neal J. Tourdo	

Date of Decision: April 11, 1997