

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Armand Suffoletto

96-00671

Name of Respondent

Dean Witter Reynolds Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 14, 1996, Claimant Armand Suffoletto ("Claimant"), who appeared Pro Se, alleged that Respondent Dean Witter Reynolds, Inc. ("Dean Witter"), wrongly imposed a penalty when he transferred his account. Claimant further alleged that in May of 1994, he transferred his IRA account from Dean Witter (#422-15802) to Tucker Anthony (#019-07375). Claimant contended that the prospectus for this investment stated that when he was over fifty-nine and one-half years of age, the penalty would be waived if he took a "distribution." Claimant further contended that when he instructed Dean Witter to transfer his funds, that constituted a distribution of Dean Witter to Claimant. Claimant asserted that Respondent wrongly penalized his account when he transferred it and requested a return of the penalty and accrued interest.

Respondent Dean Witter Reynolds, Inc., through its representative and in-house counsel, Deborah A. Roth, Esq., maintained in its Answer that Claimant did not qualify for a reimbursement of the contingent deferred sales charge ("CDSC") which he was charged when his IRA account was transferred to Tucker Anthony. Respondent further maintained that in order to qualify for a CDSC waiver, the Claimant would have had to have received a distribution. Respondent alleged that transferring IRA assets to another custodian does not qualify as a "distribution" and does not entitle the individual to a waiver of the CDSC. Respondent further alleged that Claimant executed a broker-to-broker transfer and that such transfers are not listed in the Dean Witter U.S. Government Securities Trust ("GST") prospectus as being eligible for a waiver of the CDSC. Respondent maintained that Claimant erred when he claimed that his transfer was tantamount to a distribution. Respondent further maintained that a distribution from an IRA is an income-tax reporting event and involves the physical delivery of funds to the individual, neither of which occurred in this dispute. Respondent alleged that it committed no wrongdoing and requested that the claims against it be dismissed.

In an amendment to its Answer, Respondent requested that the Arbitrator consider a recent NASD arbitration decision, Tiernan v. Dean Witter Reynolds Inc. Respondent maintained that this case presented the same issue in the current dispute; namely, whether an individual who transferred his IRA account to another firm is entitled to a waiver of the contingent deferred sales charge. Respondent further maintained that the arbitrator in Tiernan determined that he was not.

RELIEF REQUESTED

Claimant Armand Suffoletto requested \$1,500.00 in actual damages.

Respondent Dean Witter Reynolds, Inc. requested that the claims of the Claimant be dismissed. Respondent also requested that it be awarded its costs and attorney's fees, as well as such other and further relief which under the circumstances the arbitrator deems to be just and proper.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Simon J. Tager, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Armand Suffoletto on November 8, 1995, and by the Respondent Dean Witter Reynolds, Inc. on April 16, 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. Respondent Dean Witter Reynolds, Inc. is liable and shall pay to Claimant Armand Suffoletto, \$750.00 in actual damages.
2. The parties shall bear their respective costs.
3. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Armand Suffoletto, shall be retained by the NASD, Inc. Respondent Dean Witter Reynolds, Inc. is liable and shall pay to Claimant Armand Suffoletto, \$25.00 as reimbursement of one-half of the filing fee.

Award 96-00671

REPORT OF ARBITRATOR

The Claimant indicates he wanted to transfer his account and believed that this would be the same as a distribution and therefore the penalty would be waived.

The Respondent points out that the prospectus indicates specifically that only a distribution qualifies for a waiver of the CDSC. However, he also indicates that "... no language in the prospectus refers to transfers..." and thus no mention is made regarding the CDSC penalty.

Neither party indicates if anyone at Dean Witter advised the Claimant how a transfer would be treated regarding any CDSC penalty.

Therefore, based upon the evidence submitted, the Claimant neither knew nor should have known that a transfer would in fact be subject to the CDSC penalty.

I hereby award Claimant half of the amount asked for or Seven Hundred and Fifty Dollars (\$750.00).

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AFFIRMATION

I, **SIMON J. TAGER**, 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.


SIMON J. TAGER

DATE OF DECISION: August 30, 1996