

NASD REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION

In the Matter of the Arbitration Between

Name of Claimant

Dean Witter Reynolds Inc.

96-01204

Name of Respondent

W. Keats Nicoll

REPRESENTATION

Claimant Dean Witter Reynolds Inc. ("Claimant") was represented by Thomas C. Costello, Esq. of the Law Offices of John West III, Baltimore, MD.

Respondent W. Keats Nicoll ("Respondent") was represented by Patricia D. Douglass, Attorney at Law, Washington D.C.

CASE INFORMATION

Statement of Claim filed: March 18, 1996

Claimant's Submission Agreement signed on: March 14, 1996

Statement of Answer filed by Respondent, W. Keats Nicoll on: April 26, 1996

Respondent, W. Keats Nicoll's Submission Agreement signed on: April 25, 1996

HEARING INFORMATION

Hearing Date: September 9, 1996/two sessions

Hearing Location: National Association of Securities Dealers Executive Offices, Washington, D.C.
Washington, DC

CASE SUMMARY

Claimant alleged that Respondent received compensation for accounts which were managed by professional money managers pursuant to an arrangement with Claimant. Claimant alleged that these quarterly fees were paid in advance to Claimant who credited Respondent, an Account Executive employed by Claimant at the time, his share of said fees also in advance. Claimant alleged that the arrangement with the clients provided for the rebate of any fee paid in advance in the event of termination of the arrangement prior to the end of any quarter. Claimant alleged Respondent was credited \$43,223 gross at the beginning of the third quarter, July 1995. Respondent resigned on August 4, 1995 to join a competitor.

Claimant alleged Respondent also owes Claimant \$665.61 for various expenditures which were charged to Claimant, but not deducted from his compensation.

Respondent defended that spelled out in various procedural manuals those compensations which were forfeited in the employees terminated. Respondent mentioned that all manuals were silent regarding the fees paid in this case. Respondent also defended on the grounds that no other employee who was terminated was the subject of an arbitration to recover those fees. Respondent mentioned that two other employees at his office terminated and retained these advances. Respondent alleged Claimant's action in this procedure is punitive; an attempt to punish him for leaving and for having a large percentage of his account transferred to his new firm from the Claimant's firm.

Respondent admits owing Claimant \$656.61 for miscellaneous expenditures.

RELIEF REQUESTED

Claimant requested: \$10,445 plus interest for the return of the alleged overpayment of compensation. \$656.61 plus interest for the miscellaneous expenditures. Costs and reasonable attorney's fees.

Respondent requested: Claimant should pay costs and reasonable attorney's fees.

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 original remain on file with the NASD.

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. That Respondent shall pay to the Claimant the sum of \$6,306.00; inclusive of interest
2. That all requests for costs and attorney's fees are denied in their entirety except as forum fees are specifically addressed below.
3. Any and all requests not specifically addressed herein are denied in their entirety.

FORUM FEES

Pursuant to Rule 10205 of the Code of Arbitration Procedure, the following forum fees are assessed.

2 hearing sessions x \$600 = \$1200

Forum fees assessed against: Each party equally

Claimant is assessed forum fees in the amount of \$600, however Claimant is entitled to use the hearing session deposit of \$600 previously filed to offset this amount, so no additional forum fees are due from Claimant. Respondent is assessed forum fees in the amount of \$600.

Fees are payable to the NASD Regulation, Inc.

Date Award Signed

Concurring Arbitrators' Signature

10/2/96

Alexander I. Heckman

Alexander I. Heckman
Chairperson

Anne Q. Uno
Panelist

John B. Nahan, Esq.
Panelist

Date Award Served by NASD Regulation, Inc. October 9, 1996

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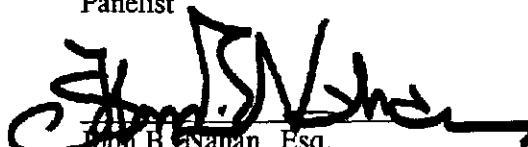
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