

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Robert and MaryAnn Totka

96-01276

Name of Respondent

Dean Witter Reynolds Inc.

REPRESENTATION

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

For Respondent: Glenn D. Kelley, Esq. of the law firm of Kelley, Aldrich & Warren, P.A., West Palm Beach, Florida.

CASE INFORMATION

Statement of Claim filed: March 22, 1996.

Claimants' Submission Agreement signed on: March 12, 1996.

Preliminary Response to Statement of Claim filed on: June 4, 1996.

Statement of Answer filed by Respondent on: November 20, 1996.

The Respondent Dean Witter Reynolds, Inc. ("Dean Witter") did not execute a Submission Agreement as required pursuant to Section 10314 of the Code of Arbitration Procedure ("Code").

HEARING INFORMATION

Two hearing sessions were conducted in this matter on December 4, 1996 in Tampa, Florida.

CASE SUMMARY

Claimants alleged that they were sold units in the Dean Witter Realty Yield Plus II Limited

Partnership. Claimants next alleged that the Respondent engaged in a continuing fraud in that they listed the value of the partnership units on the Claimants' monthly statements at cost until 1992 and they actively concealed the value of the Claimants' investment and/or fraudently misstated the value of the investment on the monthly statements. Claimants next alleged that it was not until at least 1992 that they discovered that the partnership units were not worth what the Claimants initially paid for them.

Respondent denied the allegations made by the Claimants and maintained that Dean Witter's monthly statements conformed completely with industry standards which provided for listing of partnerships at cost. Respondent next maintained, upon information and belief, for the relevant time period, the monthly statements contained a disclosure that partnership values were not market values and that limited partnerships were listed at cost; thus, there were no misrepresentations on the monthly statements.

RELIEF REQUESTED

Claimants requested compensatory damages in the sum of \$18,500.00 plus interest, attorneys' fees, costs of arbitration and such other relief as the arbitrator deemed fair and reasonable.

Respondent requested that the arbitrator deny the relief requested by the Claimants and that the arbitrator refer the issue of attorneys' fees to a court of competent jurisdiction.

OTHER ISSUES CONSIDERED & DECIDED

Respondent made a motion to preclude the introduction of evidence alleging that the Claimants failed to file a witness list and failed to provide the Respondent with any expert reports or other exhibits that they intended to introduce at the hearing. In response, the Claimants maintained that all of the Claimants' witnesses were identified to the Respondent and the exhibits were produced to the Respondent in as timely a manner as possible under the circumstances. The arbitrator ruled that the Claimants could present their witnesses, but excluded the Claimants' expert report.

Respondents made a Motion for Summary Judgment in the Circuit Court, Seventh Judicial Circuit, In and for Volusia County, Florida, Civil Division, asserting that the Claimants may not arbitrate their claims before the NASD because the claims were not brought within six years of the "occurrence or event" giving rise to the claims as required by Section 10304 (formerly Section 15) of the Code. The court entered a Final Summary Judgment stating that the Motion for Summary Judgment was granted as to all claims that the Claimants submitted to arbitration against Dean Witter except for the claim styled "Continuing Fraud and Section 15 of the NASD Code of Arbitration."

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. All claims by the Claimants against the Respondent are denied in all respects.

2. Each party shall bear their respective costs including attorneys' fees.

FORUM FEES

Pursuant to Section 10332 of the Code of Arbitration Procedure, the arbitrator has assessed forum fees in the sum of \$600.00 (\$300.00 x 2 sessions).

Claimants are hereby assessed \$300.00 for which the NASD shall retain the \$300.00 previously deposited in satisfaction thereof.

Respondent is hereby assessed the sum of \$300.00.

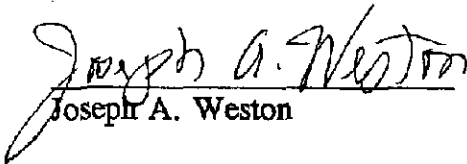
The NASD shall retain the \$100.00 nonrefundable filing fee previously paid by the Claimants.

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

Arbitrator's Signature

Name

Public/Industry


Joseph A. Weston

Public

Date of Decision:

12/9/96