

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration BetweenName of Claimant

William B. Kirtland

96-01912

Name of RespondentsDean Witter Reynolds Inc.
John Maccoll

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on May 3, 1996 Claimant, William B. Kirtland ("Claimant"), through his representative Mary Ann Waterman, Esq., a sole practitioner, located in Detroit, Michigan, alleged that he placed an order for 4000 shares of Digital EQ CP 8 7/8 Preferred A ("DECPRA"). Claimant further alleged that Respondent John MacColl ("MacColl") a broker at Respondent Dean Witter Reynolds, Inc. ("Dean Witter"), asked him to postpone the purchase to a date which was closer to June 28, 1995. Claimant also alleged that June 28, 1995 was the next scheduled dividend payment. Claimant asserted that he called twice weekly to follow up on the transaction. Claimant further asserted that MacColl purchased DECPRA on June 29, 1995, which was one day too late to qualify for the \$2,200 dividend. Claimant also asserted that his appeals to MacColl and Office Manager Raymond Basile, about the untimely purchase, were unsuccessful. Claimant contended that Respondents are liable for his loss.

Respondents Dean Witter Reynolds, Inc., and John MacColl ("Respondents"), through their representative and in-house counsel Janet T. Epstein, Esq., maintained that Claimant is not entitled to recover any money because the facts do not support the claim. Respondents further maintained that Claimant clearly stated that he did not want to pay more than \$25 net share for DECPRA. Respondents also maintained that the shares could not be purchased until the ask price reached \$24 3/4, in order to meet the Claimant's net price per share of \$25.

Respondents contended that Claimant was not a record owner by June 27, 1995 and not entitled to the dividend. Respondents further contended that Claimant's damages are overstated since he received a 50% discount on the commission on DECPRA plus \$243 in other discounted commissions. Respondents also contended that claimant received 5.65% interest on his investments in the Money Market Fund where his money was held prior to the purchase of the shares. Respondents asserted that they did not have control over the market price of DECPRA and could not be held liable for the alleged loss. Respondents further asserted that Claimant accepted an offer for compensation of \$2,200 in the form of discounted commissions on future trades. Respondents also asserted that the claims be dismissed and that any associated costs be borne by the Claimant.

Claimant William B. Kirtland, in response to the Statement of Answer, alleged that Respondents told him that DECPRA had been purchased by the ex-dividend date. Claimant further alleged that he received a check from the broker, for an amount which was equivalent to the DECPRA dividend. Claimant also alleged that after he reviewed his records, he discovered that the supposedly DECPRA dividend had been paid to him from his Individual Retirement Account ("IRA"). Claimant contended that he returned the check so that his IRA would not be charged.

Claimant William B. Kirtland withdrew his claim against Respondent John MacColl, prior to the decision on the merits.

RELIEF REQUESTED

Claimant William B. Kirtland requested \$2,200 in actual damages, plus costs.

Respondents Dean Witter Reynolds, Inc. and John MacColl requested that the claim be dismissed, plus costs.

AWARD

Pursuant to Section 10302 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Stan West, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant William B. Kirtland on April 17, 1996 and by Respondent Dean Witter Reynolds, Inc., on August 28, 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 the Claimant William B. Kirtland \$288.00 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 William B. Kirtland shall be retained by the NASD, Inc.
4. All other relief requests are denied.

AFFIRMATION

I, **STAN WEST**, 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.

A handwritten signature in cursive script that reads "Stan West". The signature is written in dark ink and is positioned above a horizontal line.

Signature of Arbitrator

DATE OF DECISION:

December 6, 1996