

NASD REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Dean Witter Reynolds, Inc

96-02240

Name of Respondent

Thomas Farrell

REPRESENTATION

For claimant Dean Witter Reynolds Inc. ("claimant") appeared Marc S. Wenger, Esq. of the law firm of Jackson, Lewis, Schnitzler & Krupman located in Woodbury, New York.

For respondent Thomas Farrell ("respondent") appeared M. David Hyman, Esq., a sole practitioner located in Ho-Ho-Kus, New Jersey.

CASE INFORMATION

Statement of Claim was filed on May 24, 1996. Claimant's Submission Agreement was signed on May 24, 1996.

Statement of Answer was filed on October 30, 1996. Respondent's Submission Agreement was signed on November 1, 1996.

HEARING INFORMATION

Hearing Date/Sessions: January 8, 1997 - Two Sessions

The hearing was held at the Club Quarters Hotel located at 52 William Street, New York, New York.

CASE SUMMARY

Claimant alleged that, on or about January 21, 1994, it employed respondent as an account executive trainee. Claimant further alleged that respondent signed a written agreement which provided that respondent would pay Dean Witter \$28,000 in the event his employment was

terminated voluntarily or for cause within three years from the date he signed the agreement. Claimant further alleged that this amount represented the expense incurred in training and compensating respondent and that the agreement provided that this amount would be reduced by ten percent of the total gross commissions generated by respondent.

Claimant alleged that, on January 30, 1996, respondent terminated his employment with Dean Witter. Claimant further alleged that, pursuant to the written agreement, respondent was obligated to pay \$23,300.00 to Dean Witter and that, despite its written demands, respondent has refused to do so.

Respondent maintained that no monies were due and owing to claimant because, while employed by claimant, he opened accounts that generated commissions which totaled much more than the reasonable cost of his training. Respondent further maintained that the provision of the agreement requiring repayment of training costs was expressly made unlawful by Section 193 of the New York Labor Law. Respondent also maintained that the training cost repayment provision was a penalty and was not a proper item of contract damages.

RELIEF REQUESTED

Claimant requested an award in the amount of \$23,300.00 due and owing under the agreement, accrued interest at the legal rate from January 30, 1996 to the date of the arbitration award, the costs of the arbitration and any and all further relief which the panel deems just and proper.

Respondent requested that the Statement of Claim be dismissed in all respects and that costs be assessed against claimant.

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. Respondent be and hereby is liable and shall pay claimant the sum of \$1,000.00.
2. Claimant's request for interest is hereby denied.
3. Each party shall bear their own costs, including attorneys' fees.
4. All other claims are hereby denied.

FORUM FEES

Pursuant to Rule 10205 (formerly Section 44(c)) of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation shall retain the \$500.00 filing fee previously deposited by claimant and have assessed the following forum fees:

2 hearing sessions x \$600.00 = \$1,200.00

Forum fees assessed against:

1. Claimant be and hereby is liable for the sum of \$600.00 representing one-half of the total amount of forum fees assessed. Claimant previously deposited \$600.00 and, therefore, claimant owes nothing to NASD Regulation.
2. Respondent be and hereby is liable and shall pay \$600.00 to NASD Regulation, representing one-half of the total amount of forum fees assessed.

Fees are payable to NASD Regulation, Inc.

Arbitrators' Signatures



James R. Madan
Chairperson-Industry Arbitrator

Robert G. Spampata, Jr.
Industry Arbitrator

Catherine I. Gulevich
Industry Arbitrator

Date of Decision: April 2, 1997

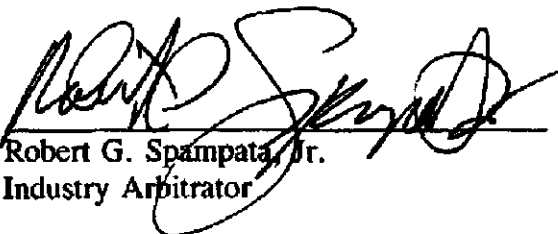
I, James R. Madan, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



James R. Madan

Arbitrators' Signatures

James R. Madan
Chairperson-Industry Arbitrator



Robert G. Spampata, Jr.
Industry Arbitrator

Catherine I. Gulevich
Industry Arbitrator

Date of Decision: April 2, 1997

I, Robert G. Spampata, Jr., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.




Robert G. Spampata, Jr.

Arbitrators' Signatures

James R. Madan
Chairperson-Industry Arbitrator

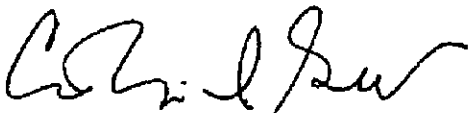
Robert G. Spampata, Jr.
Industry Arbitrator



Catherine I. Gulevich
Industry Arbitrator

Date of Decision: April 2, 1997

I, **Catherine I. Gulevich**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Catherine I. Gulevich