

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Dean Witter Reynolds Inc.

96-02653

Name of Respondent

Jack J. Pensabene

REPRESENTATION

For Claimant Dean Witter Reynolds, Inc. (DWR) appeared Mark S. Mancher, Esq of Jackson, Lewis, Schnitzler & Krupman located in Woodbury, NY.

Respondent Jack Pensabene appeared pro se.

CASE INFORMATION

The Statement of Claim was filed on June 18, 1996. Claimant's Submission Agreement was signed on June 16, 1996.

A Statement of Answer was filed by respondent Pensabene on August 5, 1996. Respondent Pensabene's Submission Agreement was signed on August 5, 1996.

HEARING INFORMATION

Hearing Dates/Sessions:	February 6, 1997	- 2 Sessions
	February 7, 1997	- 2 Sessions

Hearing Location: Midday Club located in New York, N.Y.

CASE SUMMARY

Claimant stated that on January 4, 1994, they employed Pensabene as as account executive trainee and that they entered into a written agreement with Pensabene. Claimant further stated that Pensabene completed the training course and became a duly licensed registered representative and associated person. According to claimant, Pensabene's employment was terminated on August 28, 1995 and the agreement provided that the employee will pay DWR \$28,000.00 in training expenses if he is voluntary terminated or terminated for cause within three years of the execution of the agreement. Claimant claimed the agreement further stated that the amount due would be reduced by 10% of the total gross commissions which have been generated by the employee.

DWR allegedly made a written demand upon Pensabene for payment and he refused to honor the demand.

Respondent denied allegations of wrongdoing asserted in the Statement of Claim. Pensabene maintained that his initial interview was with a branch manager who gave him a written and telephone test. Pensabene claimed to have passed both and stated he was hired in December 1993 and told that he would have to pass the Series 7 test. Pensabene contended that he passed the Series 7 exam and began the training course at DWR in May 1994. Respondent further contended that he began production in June 1994 and had met or exceeded DWR's six month performance requirements and was working towards the twelve month requirements. Respondent argued that he was given higher performance minimums than the majority of other rookies and when he did not meet them he was fired. According to respondent, when he was fired the branch manager told him "they would not come after the money".

Respondent denied that he was terminated for cause or that he was voluntarily terminated as the agreement requires.

#### **RELIEF REQUESTED**

Claimant requested:

- (a) The amount of \$24,801.30 due and owing under the agreement;
- (b) interest at the legal rate from August 28, 1995 to the date of the award;
- (c) the cost of arbitration; and
- (d) any and all further relief which the panel deems just and proper.

Respondent requested that this case be dismissed.

#### **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 Pensabene be and hereby is liable and shall pay claimant Dean Witter Reynolds, Inc. the sum of \$5,150.00 for reimbursement for the training course in full and final satisfaction of all claims.
2. Claimant's request for interest is denied.
3. Each party shall bear its own costs.
4. All other relief requests be and hereby are denied.

**FORUM FEES**

Pursuant to Rule 10205(c) of the Code of Arbitration Procedure, the panel has determined that NASD Regulation, Inc. shall retain the \$500.00 non-refundable filing fee and has assessed the following forum fees:

4 hearing sessions x \$600.00                      = \$2,400.00

The arbitrators have determined to assess one-half the cost of arbitration against claimant and one-half the cost of arbitration against respondent. Therefore claimant Dean Witter Reynolds, Inc. be and hereby is liable and shall pay NASD Regulation, Inc. the sum of \$1,200.00 less \$600.00 previously remitted as a hearing session deposit, net \$600.00 due. Respondent Pensabene be and hereby is liable and shall pay NASD Regulation, Inc. the sum of \$1,200.00.

Fees are payable to NASD Regulation, Inc.

ARBITRATORS' SIGNATURES

C. Anthony Bell  
C. Anthony Bell  
Industry Chairperson

Date of Decision 4/8/97

William E. O'Mara  
William E. O'Mara  
Industry Panelist

Charles L. Henderson, Esq.  
Charles L. Henderson, Esq.  
Industry Panelist

I, C. Anthony Bell, 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.

C. Anthony Bell  
C. Anthony Bell  
Industry Chairperson

I, William E. O'Mara, 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.

William E. O'Mara  
William E. O'Mara  
Industry Panelist

I, Charles L. Henderson, Esq., 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.

Charles L. Henderson, Esq.  
Charles L. Henderson, Esq.  
Industry Panelist

ARBITRATORS' SIGNATURES

\_\_\_\_\_  
C. Anthony Bell  
Industry Chairperson

William E. O'Mara  
William E. O'Mara  
Industry Panelist

Date of Decision 4/8/97

\_\_\_\_\_  
Charles L. Henderson, Esq.  
Industry Panelist

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\_\_\_\_\_  
C. Anthony Bell  
Industry Chairperson

I, William E. O'Mara, 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.

William E. O'Mara  
William E. O'Mara  
Industry Panelist

I, Charles L. Henderson, Esq., 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.

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Charles L. Henderson, Esq.  
Industry Panelist

ARBITRATORS' SIGNATURES

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C. Anthony Bell  
Industry Chairperson

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William E. O'Mara  
Industry Panelist

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Charles L. Henderson, Esq.  
Industry Panelist

Date of Decision 4/8/97

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Industry Chairperson

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William E. O'Mara  
Industry Panelist

I, Charles L. Henderson, Esq., 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.

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Charles L. Henderson, Esq.  
Industry Panelist