

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Raymond and Dianna Rogers

96-02960

Name of Respondents

Dean Witter Reynolds, Inc.
John Tekeser

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on July 11, 1996, claimants Raymond and Dianna Rogers ("claimants or D. Rogers"), who appeared Pro Se, alleged that respondents Dean Witter Reynolds, Inc. ("DWR") and John Tekeser ("Tekeser") churned their accounts from the period of September 1990 through September 1991, and that DWR breached its fiduciary duty to monitor their account. Claimants further alleged that in April of 1988, they began their investing relationship with DWR and that until Tekeser took over as their broker in 1990, they had made very few transactions. D. Rogers also alleged that she was the only one to speak to Tekeser and that she informed him of her goal to invest safely for retirement. D. Rogers contended that subsequent to their initial conversation, Tekeser made several calls per week telling her that she should be in the stock market, advice which she succumbed to because he was insistent and convincing. D. Rogers further contended that Tekeser made 106 trades during the aforementioned period and that many of those trades were held for less than three months. D. Rogers further contended that those transactions included but were not limited to the purchase and sale of Abbott Laboratories, Apple Computer, Inc., Biogen Inc. Mass., Elscint Limited Ord., Int Movie Group, Merry Go Round Enterprises and Promus Co., Inc. D. Rogers also contended that because of the heavy trading, she transferred her assets to another firm along with a stock called Centocor. D. Rogers asserted that due to the excessive trading she did not accept advice to sell it offered to her by a DWR broker, Patrick Koepke, but held the Centocor stock as it fell in value. Claimants further asserted that as a result of the above, they have suffered losses for which the respondents should be held liable.

Respondent Dean Witter Reynolds, Inc. through its representative and in-house counsel, Wendy R. Robinson, Esq., maintained that claimants never complained about the transactions when they

were made nor did they complain when they filed their 1990 and 1991 tax returns. Claimants further maintained that claimants misrepresent their trading objectives at the time the account was opened as their first stated investment objective was capital appreciation and their second was speculation. Respondent also maintained that when Tekeser took over their account, he contacted the claimants who expressed their dissatisfaction with the performance of their prior DWR brokers. Respondent contended that Tekeser discussed each and every transaction with claimant and received their approval prior to making a trade. Respondent further contended that Tekeser had not intent to defraud, was not reckless, and clearly did not disregard the claimant's interests. Respondent also contended that Tekeser simply carried out claimant's objectives. Respondent asserted that claimants must accept responsibility for the results of the transactions they entered in their accounts years ago, and should be barred from asserting any claim at this late date.

Respondent John Tekeser, who appeared Pro Se, maintained that the claimant's complaint is contradictory. Respondent further maintained that claimants stated that he contacted them too often and that he did not contact them often enough. Respondent also maintained that at the time the transactions were made, they sent him a thank you note and waited years to pursue a complaint. Respondent contended that he did not churn their account but followed claimant's directive to trade stocks aggressively because they were unhappy with the investment results of their former broker. Respondent further contended that the account was not discretionary and that he had regular account reviews with his manager. Respondent also contended that all transactions were authorized by the claimants and that as a result of the above, he should not be held liable.

RELIEF REQUESTED

Claimants Raymond and Dianna Rogers requested \$8,337.45 in actual damages plus interest.

Respondent Dean Witter Reynolds requested that the claims be dismissed in their entirety and that it be reimbursed for costs and expenses.

Respondent John Tekeser requested that the claims be dismissed in their entirety.

AWARD

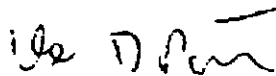
Pursuant to Section 10302 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Keith D. Patten, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the claimant on July 1, 1996, by respondent Dean Witter Reynolds, Inc. on September 6, 1996, and by John Tekeser on September 9, 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. Respondents Dean Witter Reynolds, Inc. and John Tekeser are jointly and severally liable and shall pay to the claimants Raymond and Dianna Rogers \$4,350.00 in actual damages.
2. The parties shall bear their respective attorneys' fees and costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the claimants shall be retained by the NASD, Inc. Respondents Dean Witter Reynolds, Inc. and John Tekeser are jointly and severally liable and shall pay to the claimants Raymond and Dianna Rogers \$75.00 as reimbursement of one-half of the filing fee.
4. All other relief requests are denied.

AFFIRMATION

I, Keith D. Patten, Esq., 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.



Signature of Arbitrator

DATE OF DECISION: December 19, 1996