

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Dean Witter Reynolds Inc.

96-03030

Name of Respondent(s)

Jan E. Andreasen

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**REPRESENTATION**

For Claimant Dean Witter Reynolds, Inc. ("Dean Witter"): Michael Taaffe, Esq. of Abel, Band, Russell, Collier, Pitchord & Gordon, Sarasota, FL.

Respondent Jan Andreasen ("Andreasen") appeared pro se.

**CASE INFORMATION**

Statement of Claim filed: July 16, 1996. Claimant's Submission Agreement signed on: July 12, 1996 by Ralph Schiavo on behalf of Dean Witter.

Respondent failed to file a Statement of Answer and failed to sign a Submission Agreement as required by Rules 10301 and 10314 of the NASD Code of Arbitration Procedure ("Code") (see "Other Issues"). Notwithstanding the failure to file an Answer, the panel accepted Respondent's letters denying liability and challenging jurisdiction dated May 28, 1996, September 6, 1996, October 19, 1996, November 21, 1996 and January 9, 1997 and the attachments thereto into evidence and considered same as Respondent's Answer.

**HEARING INFORMATION**

On November 22, 1996 a prehearing conference lasting one session was conducted via telephone conference call with the full panel.

On February 3, 1997 in Ft. Lauderdale, Florida a hearing lasting two sessions was conducted.

### **CASE SUMMARY**

Claimant alleged that Respondent was liable for monies owed pursuant to the Account Executive Trainee Employment Agreement which provided that in the event of voluntary termination the Respondent would pay to Claimant the amount of \$28,000.00 representing the cost and expense incurred by the Claimant in training Respondent.

Respondent alleged that the agreement was not signed by Dean Witter. Respondent maintained that the copy of the Agreement that was provided to Respondent, and which purported to contain the branch manager's signature, indicated that the manager signed the Agreement on July 6, 1995 but the copy of the agreement which Respondent signed on July 10, 1995 did not contain the branch manager's signature. Respondent next maintained that he had no expectation that the Agreement was in effect at the time of his resignation and that, even if the document was properly executed, it would have been unenforceable and invalid.

Respondent further alleged that the NASD lacked jurisdiction over this matter because the Agreement was not properly executed; Claimant had made no effort to resolve this dispute prior to filing for arbitration; the case involved purely legal issues which are only adequately adjudicated by lawyers and not by industry arbitrators; and there are no relevant securities industry customs applicable to this matter.

### **RELIEF REQUESTED**

Claimant requested damages in the amount of \$28,000.00, plus interest and costs.

Respondent requested dismissal of the claim.

### **OTHER ISSUES CONSIDERED & DECIDED**

Respondent did not personally appear at the hearing on February 3, 1997 but telephoned in to the hearing to request a postponement of the hearing based on the fact that he had not received a ruling from the NASD on his Motion to Decline the Use of the NASD Arbitration Facilities which he had filed on January 9, 1997. Respondent was then advised that the NASD had issued a ruling on January 31, 1997 denying said motion. Respondent reiterated his request for a postponement of the hearing and renewed his Motion to Dismiss for Lack of Jurisdiction. The panel denied Respondent's postponement request and found subject matter jurisdiction over this controversy pursuant to Rule 10101 of the NASD Code of Arbitration Procedure ("Code"). The NASD Case Number 96-03030

arbitration panel further found that the Respondent was a person associated with a member of the NASD at the time the controversy arose. Consequently, the arbitration panel found personal jurisdiction over the Respondent pursuant to Rule 10301 of the Code.

In view of the above, the arbitration panel found that the Respondent was required to file with the NASD a Statement of Answer and a properly executed Submission Agreement pursuant to Rule 10314(b) of the Code. In this regard the arbitration panel found that the Statement of Claim was properly served upon the Respondent pursuant to Rule 10314(a) of the Code.

In addition, in accordance with Rules 10310, 10315 and 10318 of the Code, the arbitration panel found that the NASD provided Respondent with "due notice" of the hearing conducted in this matter as evidenced by the correspondence sent by certified and regular mail. The arbitration panel, therefore, determined to proceed with the hearing and permitted Respondent to appear via telephone.

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 is found liable and shall pay to Claimant the sum of \$28,000.00 plus interest at the rate of 10% per annum from March 4, 1996 to February 3, 1997 in the amount of \$2,577.12 for a total due to Claimant of \$30,577.12.
2. Respondent is also found liable and shall pay to Claimant the further amount of \$600.00 representing a reimbursement of the \$600.00 hearing session deposit previously paid by Claimant to the NASD.
3. Claimant's request for other costs is denied.

#### **OTHER COSTS**

Other than the forum fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

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Award

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**FORUM FEES**

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$1,800.00.

1. Respondent is hereby assessed \$1,800.00 for which the NASD shall retain the \$600.00 previously deposited by Claimant in partial satisfaction thereof, leaving a balance due to the NASD of \$1,200.00.

2. The NASD shall retain the \$500.00 non-refundable filing fee previously paid by Claimant to the NASD.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

\_\_\_\_\_/s/\_\_\_\_\_  
Daniel H. Yaffe

Industry/Chairman

\_\_\_\_\_/s/\_\_\_\_\_  
David L. Yerkes

Industry

\_\_\_\_\_/s/\_\_\_\_\_  
Joel Margolies

Industry

Date of Decision: February 25, 1997