

N.A.S.D. REGULATION, INC. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Dean Witter Reynolds Inc.

96-03046

Name of Respondent

Robert S. Evans

REPRESENTATION

For claimant Dean Witter Reynolds, Inc. ("claimant") appeared its representative and in-house counsel Ralph P. Schiavo, Esq.

Respondent Robert S. Evans ("respondent") did not enter an appearance at the evidentiary hearing conducted in this matter.

CASE INFORMATION

Statement of Claim filed: July 16, 1996.

Claimant's Submission Agreement signed on: July 12, 1996.

Respondent did not file a Statement of Answer or a Submission Agreement.

HEARING INFORMATION

Hearing Dates/Sessions: March 12, 1997 one session

The hearing was conducted at the Doubletree Hotel located in Charlotte, North Carolina.

CASE SUMMARY

Claimant alleged that respondent was employed as an Account Executive by it from February 11, 1994 to February 16, 1996. Claimant further alleged that during this time, respondent was an associated person of a member firm of the National Association of Securities Dealers, Inc. Claimant also alleged that on February 11, 1994, respondent executed and delivered to Dean Witter a Promissory Note ("Note") in the principal amount of \$100,000.00 payable in four equal installments. Claimant contended that the Note provides, *inter alia*, that if respondent died while employed by claimant or was terminated for any reason, the unpaid balance of the principal sum, plus accrued interest, should be immediately due and payable as of the date of such death or termination of employment.

Claimant asserted that respondent terminated his employment with claimant effective February 16, 1996, at which time all outstanding amounts of principal under the Note became immediately due and payable. Claimant further asserted that respondent breached the Note by failing to pay the remaining principal sum of \$75,000.00 plus accrued interest at the rate of 7% from February 11, 1995 all of which is now due and owing under the Note. Claimant contended that on March 14, 1996, April 17, 1996 and May 15, 1996, it made written demand on respondent for repayment of amounts owed under the Note and that respondent refuses to honor these demands.

RELIEF REQUESTED

Claimant requested \$75,000.00 plus accrued interest at the legal rate from February 11, 1995 through the date of the award plus costs of the arbitration, reasonable attorney's fees and any and all further relief which the panel deems just and proper.

OTHER ISSUES CONSIDERED & DECIDED

The arbitration panel made the following rulings concerning respondent Robert Evans who did not file a Statement of Answer nor a Submission Agreement, and who also failed to appear at the evidentiary hearing conducted in this matter:

1. Pursuant to Rule 10101 of the NASD Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that respondent Evans was a member of the NASD at the time this controversy arose. Consequently, the panel found personal jurisdiction over Respondent pursuant to Section 10301 of the Code.
3. In view of (2) above, the panel found respondent Evans was required to file with NASD Regulation, Inc. a Statement of Answer and a properly executed Submission Agreement pursuant to Rule 10314(b) of the Code. In this regard, the panel found that the Statement of Claim was properly served upon respondent Evans, pursuant to Rule 10314(a) of the Code.
4. In addition, in accordance with Rules 10310, 10315 and 10318 of the Code, the panel found that NASD Regulation, Inc. provided respondent Evans with "due notice" of the hearing conducted in this matter by regular and certified mail and by telephone. The panel therefore, determined to proceed with the hearing without respondent Evans, whose absence was unexcused.

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 Robert Evans be and hereby is liable and shall pay to claimant Dean Witter Reynolds, Inc. \$62,881.00 in compensatory damages.
2. Respondent Robert Evans be and hereby is liable and shall pay to claimant Dean Witter Reynolds, Inc. \$1,500.00 as provided for by contractual agreement between the parties.
3. The parties shall bear their respective costs.
4. All other relief requests are denied.

FORUM FEES

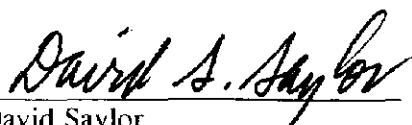
Pursuant to Rule 10205(c) of the Code, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$500.00 non-refundable filing fee previously deposited by claimant and have assessed the following forum fees:

one sessions x \$600.00	= \$600.00
minus claimant's \$600.00 deposit	= <u>\$600.00</u>
total outstanding	= \$ 0.00

Respondent Robert Evans be and hereby is liable for the sum of \$1,100.00 representing the total amount of forum fees assessed plus the non-refundable filing fee. Therefore, Evans shall pay to claimant Dean Witter Reynolds, Inc. \$1,100.00 as reimbursement of the hearing session deposit and non-refundable filing fee.

ARBITRATORS' SIGNATURES

I, David Saylor, do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my oath and award.

A handwritten signature in cursive script, reading "David S. Saylor", written over a horizontal line.


David Saylor
Industry Chairperson

I, W. Wells Van Pelt, Jr., do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my oath and award.



W. Wells Van Pelt, Jr.
Industry Arbitrator

I, Kenneth Adams, do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my oath and award.



Kenneth Adams
Industry Arbitrator

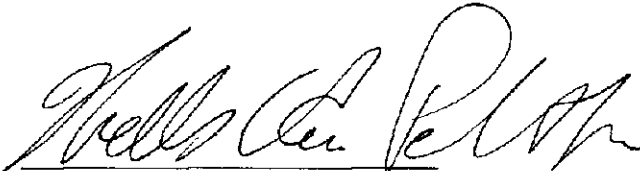
Date of Decision: April 2, 1997

ARBITRATORS' SIGNATURES

I, David Saylor, do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my oath and award.

David Saylor
Industry Chairperson

I, W. Wells Van Pelt, Jr., do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my oath and award.



W. Wells Van Pelt, Jr.
Industry Arbitrator

I, Kenneth Adams, do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my oath and award.

Kenneth Adams
Industry Arbitrator

Date of Decision: April 2, 1997

ARBITRATORS' SIGNATURES


I, David Saylor, do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my oath and award.

David Saylor
Industry Chairperson

I, W. Wells Van Pelt, Jr., do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my oath and award.

W. Wells Van Pelt, Jr.
Industry Arbitrator

I, Kenneth Adams, do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my oath and award.



Kenneth Adams
Industry Arbitrator

Date of Decision: April 2, 1997