

**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)**

JOSEPH A. MOOTER

96-03385

**Name of Respondent(s)**

DEAN WITTER REYNOLDS INC., and  
BARRY OLFERN, jointly and severally

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**REPRESENTATION**

For Claimant: John A. Hubbard, Esq. of the law firm of Alan R. Miller, P.C.,  
Birmingham, MI.

For Respondent Dean Witter Reynolds Inc.: Allison B. Doneghey, Esq., Dean Witter  
Reynolds Inc., Sarasota, FL.

For Respondent Barry Olfern: Peter J. Aldrich, Esq., of the law firm of Kelley, Aldrich &  
Warren, P.A., West Palm Beach, FL.

**CASE INFORMATION**

Statement of Claim filed on: August 5, 1996.

Claimant's Submission Agreement signed on: October 8, 1996.

Joint Statement of Answer filed by Respondents on: October 9, 1996.

Respondent Dean Witter Reynolds Inc.'s Submission Agreement signed on: February 18,  
1998.

Respondent Barry Olfern's Submission Agreement signed on: February 19, 1998.

**HEARING INFORMATION**

A pre-hearing conference was conducted with <sup>the full Panel on April 17, 1997 and with</sup> the Chairman on July 8, 1997. In addition,

hearings lasting five sessions were conducted February 18, 19 and 20, 1998 in Fort Lauderdale, FL.

### **CASE SUMMARY**

Claimant, Joseph A. Mooter, alleged that he opened a joint account at Dean Witter Reynolds Inc. with an individual who was not a party to this arbitration. The Claimant's intention was to use the account for investment purposes. Claimant alleged that Respondents Barry Olfern and Dean Witter Reynolds Inc. disregarded firm procedure, breached NASD regulations and breached Respondents' duty to Claimant by allowing the above-referenced non-party individual to make unauthorized withdrawals from the account, thereby allowing the individual to embezzle approximately \$250,000.00 from Claimant.

Respondents, Dean Witter Reynolds Inc. and Barry Olfern, denied all allegations of wrongdoing and asserted that they properly performed all duties owed to Claimant and acted in accordance with all applicable NASD regulations. Respondents alleged that no firm policies were violated and that Claimant authorized the disputed withdrawals.

### **RELIEF REQUESTED**

Claimant requested damages in the sum of \$252,188.00 representing the withdrawals. Further, Claimant requested punitive damages, as well as costs and attorney's fees.

Respondents Dean Witter Reynolds Inc. and Barry Olfern requested that all claims asserted by the Claimant be denied in their entirety, that an award be entered in their favor and that all forum fees be assessed against the Claimant. Respondent Barry Olfern further requested that all references to this matter in his CRD record be expunged.

### **OTHER ISSUES CONSIDERED AND 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 NASD Regulation, Inc. The parties agreed to accept the stenographic record of the proceedings as the official record.

### **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. All claims by the Claimant against both Respondents, including Claimant's requests for punitive damages and costs, be and hereby are denied and dismissed in all respects.
2. The NASD is hereby ordered to expunge any reference in the Central Depository System relating to Barry Olfern in regard to this case.

### **FORUM FEES AND COSTS**

Pursuant to Rule 10332 of the Code of Arbitration Procedure, the arbitration panel has assessed forum fees in the sum of \$ 4,800.00 and costs in the sum of \$ 4,500.00.  
 (Forum fees: 5 sessions x \$750.00 plus 1 prehearing conference at \$750.00 and one prehearing conference at \$300.00.)

1. Respondent, Dean Witter Reynolds Inc., is assessed the sum of \$ 4,275.00 less the \$ 2,250.00 previously deposited in partial satisfaction thereof, leaving a balance due to NASD Regulation, Inc. in the sum of \$ 2,025.00.

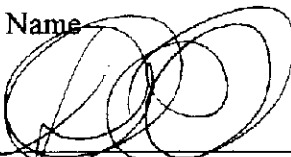
2. Respondent Dean Witter Reynolds Inc. is assessed costs in the amount of \$4,500.00 payable directly to Claimant.

3. Claimant is assessed the sum of \$ 525.00 less the \$ 300.00 previously deposited in partial satisfaction thereof, leaving a balance due to NASD Regulation, Inc. in the sum of \$ 225.00.

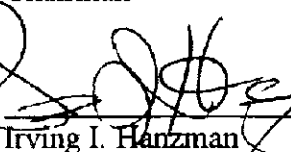
#### **Concurring Arbitrators' Signatures**

Name

Public/Industry



Steven N. Ainsbinder, Esq.  
Chairman



Irving I. Hanzman



Tim A. Shane, Esq.

Date of Decision: February 20, 1998