

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Jung-Hsien and Tze-Jau Tsao

96-03398

Name of Respondents

Dean Witter Reynolds Inc.
Andrew Kronitz

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on August 7, 1996, claimants Jung-Hsien and Tze-Jau Tsao ("claimants"), through their representative and counsel, Robert H. Putnam, Jr., Esq., a sole practitioner located in Atlanta, Georgia, alleged that respondent Dean Witter Reynolds, Inc. ("DWR"), through its representative respondent Andrew Kronitz ("Kronitz"), provided unsuitable investment advice for their small retirement accounts to their detriment. Claimants further alleged that on they began investing with DWR in 1986 and contributed several thousand dollars over the following years and was placed mainly in DWR funds and zero coupon bonds. Claimants also alleged that in 1991, Kronitz took over their account, offered information on other investments and solicited names of other potential customers. Claimants contended that Kronitz convinced them each to purchase 400 RJR Nabisco Holdings Corp. Depository Preferred shares (the "Shares"). Claimants further contended that Kronitz did not fully describe the risks of the investment nor that it had a limited upside potential. Claimants also contended that Standard and Poors rating reflected that the security had speculative elements and that its future could not be considered well assured. Moreover, the shares were tied to the value of RJR Common Stock and that one month after the recommendation, Value Line gave that security a below average rating. Claimants asserted that as a result of the above, they have suffered losses for which the respondents should be held liable.

Respondents Dean Witter Reynolds, Inc. and Andrew Kronitz through their representative and in-house counsel, Paul G. Thomas, Esq., denied each and every "fact," allegation, statement, claim, averment, conclusion of law and Statement of Claim. Respondents maintained that

claimants invested \$4,450.00 each in the Shares and sold them on an unsolicited basis in May of 1993. Respondents further maintained that claimants are raising a claim more than three years later on the only investment in their accounts to have suffered a decline in value. Respondents also maintained that in light of claimants' investment objectives, the investment was suitable as a long-term investment. Respondents contended that in 1991, Kronitz recommended an investment strategy to claimants which they followed. Respondents further contended that the Shares were explained in detail to claimants including the conversion rate and the dividend payment. Respondents also contended that the Shares were issued by one of the world's leading consumer products companies which had never failed to make interest or principal payments on its obligations. Respondents asserted that the Shares were an appropriate diversification of the accounts and that as a result of unforeseen market forces, the shares declined in value. Respondents further asserted that because of the claimants attempts to time the market, they suffered the losses. Respondents also asserted that as a result of the above, they should not be held liable.

RELIEF REQUESTED

Claimants Jung-Hsien and Tze-Jau Tsao requested that each receive \$1,866.25 in actual damages plus 7% interest per annum, attorney's fees of \$1,250.00 and costs.

Respondents Dean Witter Reynolds, Inc. and Andrew Kronitz requested that the claims be dismissed in their entirety and that they be reimbursed for costs.

AWARD

Pursuant to Section 10302 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Harriet H. Harris, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the claimants on July 22, 1996, and by respondents Dean Witter Reynolds, Inc. on September 30, 1996, and Andrew Kronitz on August 19, 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 Andrew Kronitz are jointly and severally liable and shall pay to the claimants Jung-Hsien and Tze-Jau Tsao \$3,732.50 in actual damages.
2. Respondents Dean Witter Reynolds, Inc. and Andrew Kronitz are jointly and severally liable and shall pay to the claimants Jung-Hsien and Tze-Jau Tsao \$1,250.00 as reimbursement of attorney's fees as authorized under Georgia State statute O.C.G.A. Section 13-6-11.
3. The parties shall bear their respective costs.

4. The \$125.00 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 Andrew Kronitz are jointly and severally liable and shall pay to the claimants Jung-Hsien and Tze-Jau Tsao \$62.50 as reimbursement of one-half of the filing fee.
5. All other relief requests are denied.

AFFIRMATION

I, **Harriet H. Harris, 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: January 13, 1997