

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Dean Witter Reynolds, Inc.

96-03475

Name of Respondent

Daniel J. Capozzi, III

REPRESENTATION

Claimant Dean Witter Reynolds, Inc. ("Claimant") was represented by K. Stewart Evans, Jr., Esq., Pepper, Hamilton & Scheetz, Washington, DC.

Respondent Daniel J. Capozzi, III ("Respondent") did not appear.

CASE INFORMATION

The Statement of Claim was filed August 12, 1996.

Claimant's Uniform Submission Agreement was signed August 7, 1996.

Respondent's Statement of Answer was filed May 19, 1997.

Respondent did not submit an executed agreement to arbitrate.

HEARING INFORMATION

Prehearing Date/Sessions: September 23, 1997/one session

Hearing Date/Sessions: December 18, 1997/one session

Hearing Location: Tremont Hotel  
Baltimore, MD

CASE SUMMARY

Claimant alleged that Respondent was employed as an Account Executive by Claimant from November 17, 1995 until May 17, 1996 and during this time he executed a promissory note ("note") in the principal amount of \$132,000.00, payable in four equal annual installments. Claimant further alleged that the note provided that if Respondent's employment was terminated for any reason, the unpaid balance of the principal sum, plus accrued interest, would be immediately due and payable as of the date of such termination. Claimant asserted that Respondent's employment terminated effective May 17, 1996 and the note became immediately due and payable. However, Claimant alleged that Respondent failed to pay the principal sum plus the accrued interest as agreed in the note.

Respondent filed a general denial of the claim as alleged but failed to appear at the hearing to provide further response to the general denial as filed.

### **RELIEF REQUESTED**

Claimant requested \$132,000.00 plus accrued interest at the contract rate from November 17, 1995 through the date of this award; and the costs of this arbitration including all reasonable attorneys' fees.

Respondent requested that all claims be dismissed.

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

The parties present at the hearing 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.

Pursuant to the NASD by-laws, the panel determined that Respondent was required to submit to this arbitration, notwithstanding his failure to submit an executed agreement to arbitrate. Therefore, Respondent is bound by the panel's rulings and determinations.

### **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. That Respondent is liable to and shall pay to Claimant \$132,000.00 plus 7% interest from November 17, 1995 until December 18, 1997; and
2. That Respondent is liable to and shall pay to Claimant attorney's fees of \$4,800.00; and
3. That Respondent is liable to and shall reimburse Claimant for the \$750.00 hearing session deposit previously submitted to the NASD Regulation; and
4. That any and all relief not specifically addressed herein is denied.

### **OTHER COSTS**

Pursuant to Rule 10333, Claimant is assessed a member surcharge of \$350.00. Claimant shall receive a credit of \$50.00 for the deposit previously submitted to the NASD Regulation, leaving a net member surcharge due of \$300.00.

**FORUM FEES**

Pursuant to Rule 10205(c) of the Code, the following Forum Fees are assessed:

1 Full Panel Prehearing Session x \$750.00 = \$ 750.00

1 Hearing Session x \$750.00 = \$ 750.00

**Total Forum Fees** **\$1,500.00**

Forum Fees are assessed to Respondent. Respondent shall receive credit for the \$750.00 hearing session deposit submitted to the NASD Regulation by Claimant which Respondent was ordered to reimburse directly to Claimant, leaving a net assessment due from Respondent of \$750.00.

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

**DATE**

**CONCURRING ARBITRATORS' SIGNATURES**

1/2/98

Alexander I. Heckman  
Alexander I. Heckman, Presiding  
Industry Arbitrator

O. Ray Vass  
O. Ray Vass  
Industry Arbitrator

Henry H. Hopkins  
Henry H. Hopkins  
Industry Arbitrator

Date Decision Served by NASD Regulation:

January 20, 1998

**FORUM FEES**

Pursuant to Rule 10205(c) of the Code, the following Forum Fees are assessed:

1 Full Panel Prehearing Session x \$750.00 = \$ 750.00

1 Hearing Session x \$750.00 = \$ 750.00

**Total Forum Fees** **\$1,500.00**

Forum Fees are assessed to Respondent. Respondent shall receive credit for the \$750.00 hearing session deposit submitted to the NASD Regulation by Claimant which Respondent was ordered to reimburse directly to Claimant, leaving a net assessment due from Respondent of \$750.00.

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

**DATE**

**CONCURRING ARBITRATORS' SIGNATURES**

January 7, 1998

Alexander I. Heckman, Presiding  
Industry Arbitrator

O. Ray Vass  
Industry Arbitrator

Henry H. Hopkins  
Industry Arbitrator

Date Decision Served by NASD Regulation:

January 20, 1998

**FORUM FEES**

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

**DATE**


**CONCURRING ARBITRATORS' SIGNATURES**

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Alexander I. Heckman, Presiding  
Industry Arbitrator

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O. Ray Vass  
Industry Arbitrator

1-7-98

  
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Henry H. Hopkins  
Industry Arbitrator

Date Decision Served by NASD Regulation.

January 26, 1998