

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.

96-03483

Name of Respondent

Timothy M. Tinker

REPRESENTATION

Claimant Dean Witter Reynolds, Inc. ("Claimant") was represented by Thomas C. Costello, Esq., Law Offices of John West, III, Baltimore, MD.

Respondent Timothy M. Tinker ("Respondent") was represented by Kenneth P. Niman, Esq., Ingberman & Horwitz, Baltimore, MD.

CASE INFORMATION

The Statement of Claim was filed August 12, 1996.

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

The Statement of Answer was filed October 4, 1996.

Respondent's Submission Agreement was signed on September 24, 1996.

HEARING INFORMATION

Hearing Date/Sessions: March 6, 1997/one session

Hearing Location: Doubletree Hotel
Baltimore, MD

CASE SUMMARY

Claimant alleged that Respondent, employed by Claimant as an Account Executive trainee on December 13, 1993, entered into an Account Executive Trainee Employment Agreement ("Agreement"). Claimant alleged that the Agreement provided that in the event of voluntary termination the Respondent would reimburse Claimant for \$28,000.00 as the cost and expense incurred by Claimant for training Respondent. Claimant alleged that the Agreement went on to provide that if Respondent was employed for more than one year after signing the Agreement, the \$28,000.00 would be reduced by ten percent (10%) of the total gross commissions which had been generated by Respondent. Claimant alleged that Respondent was employed for more than one year following the execution of the Agreement and Respondent had gross commissions of \$133,025.00. Therefore, Claimant reduced the \$28,000.00 amount by \$13,302.50, leaving a balance due from Respondent of \$14,697.50.

Respondent denied the allegation asserted in the Statement of Claim that there are any funds due to Claimant. Respondent maintained that the repayment provision in the Agreement is selectively enforced by Claimant and as such Agreements have not been enforced against other Account Executives, the Agreement should not be enforced against Respondent. Respondent maintained that Claimant has not appropriately calculated the damages due from Respondent. In addition, Respondent maintained that as Respondent had been given substantial additional employment duties for which Respondent was not properly compensated, a set-off or credit for the additional duties should be given as to the determination of any monies due to Claimant. Respondent also maintained that the provisions of the Agreement are unenforceable as a matter of law.

RELIEF REQUESTED

Claimant requested damages of \$14,697.50; interest at the legal rate from May 17, 1996 to the date of the arbitration award; and the costs and expenses of the arbitration.

Respondent requested that the Statement of Claim be dismissed.

OTHER ISSUES CONSIDERED & 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 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. That Respondent Timothy M. Tinker is liable to and shall pay to Claimant \$14,697.50.
2. That Respondent Timothy M. Tinker is liable to and shall reimburse Claimant for \$300.00, which is one-half of the hearing session deposit previously submitted by Claimant to the NASD Regulation.
3. That each party shall bear its own costs and expenses, with the exception of Forum Fees as discussed herein.
4. That any and all relief not specifically addressed herein is denied.

FORUM FEES

Pursuant to Rule 10205(c) of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed:


1 session x \$600.00 = \$600.00

Forum Fees are assessed against Claimant at \$300.00 and against Respondent Tinker at \$300.00. The parties are to receive credit for the \$600.00 hearing session deposit previously submitted to the NASD Regulation by Claimant, of which \$300.00 has been reimbursed to Claimant by Respondent. Therefore, there are not additional Forum Fees due to the NASD Regulation.

DATE

CONCURRING ARBITRATORS' SIGNATURES

3/13/97



Bonnie K. Wachtel, Chairman
Industry Arbitrator

Oscar W. Carlson, Jr.
Industry Arbitrator

Henry H. Hopkins
Industry Arbitrator

Date Decision Served by NASD Regulation: March 21, 1997

FORUM FEES

Pursuant to Rule 10205(c) of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed:

1 session x \$600.00 = \$600.00

Forum Fees are assessed against Claimant at \$300.00 and against Respondent Tinker at \$300.00. The parties are to receive credit for the \$600.00 hearing session deposit previously submitted to the NASD Regulation by Claimant, of which \$300.00 has been reimbursed to Claimant by Respondent. Therefore, there are not additional Forum Fees due to the NASD Regulation.

DATE

CONCURRING ARBITRATORS' SIGNATURES

Mar. 13, 1997

Bonnie K. Wachtel, Chairman
Industry Arbitrator

Oscar W. Carlson, Jr.
Oscar W. Carlson, Jr.
Industry Arbitrator

Henry H. Hopkins
Industry Arbitrator

Date Decision Served by NASD Regulation:

March 21, 1997

FORUM FEES

Pursuant to Rule 10205(c) of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed:

1 session x \$600.00 = \$600.00

Forum Fees are assessed against Claimant at \$300.00 and against Respondent Tinker at \$300.00. The parties are to receive credit for the \$600.00 hearing session deposit previously submitted to the NASD Regulation by Claimant, of which \$300.00 has been reimbursed to Claimant by Respondent. Therefore, there are not additional Forum Fees due to the NASD Regulation.

DATE

CONCURRING ARBITRATORS' SIGNATURES

Bonnie K. Wachtel, Chairman
Industry Arbitrator

Oscar W. Carlson, Jr.
Industry Arbitrator

3-13-97



Henry H. Hopkins
Industry Arbitrator

Date Decision Served by NASD Regulation: March 21, 1997