

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Susan Saper and Julian Saper

and

3842

NASD Case Number 96-

Name of Respondent

Dean Witter Reynolds, Inc.

CASE INFORMATION

Claimants Susan Saper and Julian Saper ("Sapers") filed the Statement of Claim on or about August 26, 1996. Claimants filed a rebuttal to Respondent's Statement of Answer of or about October 24, 1996. Claimants Susan Saper and Julian Saper signed the Submission Agreement of Claimant on or about August 26, 1996.

Respondent Dean Witter Reynolds, Inc. ("DWR") filed the Statement of Answer on or about October 21, 1996. Respondent filed a Response to Claimants' Rebuttal of the Statement of Answer on or about November 4, 1996. Ellen Fong signed the Submission Agreement on behalf of Respondent DWR on or about October 21, 1996.

CASE SUMMARY

Claimants Susan Saper and Julian Saper alleged that:

- 1) they received incompetent investment advice by their Dean Witter Reynolds, Inc. broker, Don Metter (Metter),
- 2) Metter failed to disclose the tax consequences of his recommendation to transfer funds from "a matured 5 year Annuity" to Dean Witter Select Government. U.S. Treasury Bonds (Unit Trust),
- 3) by following Metter's investment advice, they incurred \$3,865.00 in taxes, and

- 4) Metter's non-disclosure of the tax jeopardy of his investment advice, caused them to incur damages in the amount of \$3,865.00.

Respondent denied the allegations set forth in the Statement of Claim. Respondent specifically stated that:

- 1) the claimants were forewarned to seek advice regarding possible tax consequences of the transaction in dispute,
- 2) Metter stated to the Sapers that they would incur a tax liability if they surrendered the Northbrook Annuity and did not rollover the funds to another annuity through a 1035 Exchange,
- 3) the Saper's annuity contract contained tax information about the annuity, and
- 4) the Sapers knew that the Unit Trust was not an annuity and that investing in the Unit Trust would not be a tax-free transaction because they did not complete and sign any 1035 Exchange documents.

RELIEF REQUESTED

Claimant requested an award in the amount of \$3,865.00

Respondent denied the claim asserted against it and asked the panel to dismiss the claim in its entirety.

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 original(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

AWARD

Pursuant to the NASD Regulation, Inc. Code of Arbitration Procedure Section 10302, a single public arbitrator, Steven Samson, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by claimants and respondent.

The arbitrator, after considering the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim filed by Susan Saper and Julian Saper is hereby dismissed and denied in its entirety.
2. The parties shall bear their own costs of arbitration including Attorney's Fees and NASD Forum Fees, except for those specifically enumerated herein; and
3. Any relief requested not specifically granted herein is denied in its entirety.

FORUM FEES

Pursuant to §10332(c) of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$ 50.00 and shall **retain** as forum fees the hearing session deposit in the amount of \$ 75.00 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant .

Pursuant to §10333 of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$100.00.

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

AFFIRMATION

I, Steven Samson, 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.

/s/ Steven Samson February 7, 1997
Signature of Arbitrator and Date Signed

Date served by the NASD: February 10, 1997