

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between:

Name of Claimant

Daniel Murphy

96-04835

Name of Respondents

Dean Witter Reynolds Inc.
Samuel Robert Swindells

CASE SUMMARY

In a case filed with National Association of Securities Dealers Regulation, Inc. on October 30, 1996, claimant Daniel Murphy ("claimant"), through his representative and counsel Douglas Lally, Esq., a sole practitioner, located in Jenkintown, Pennsylvania, alleged that respondents Dean Witter Reynolds, Inc. ("Dean Witter") and Samuel Swindells ("Swindells") substantially deviated from his investment objectives. Claimant further alleged Swindells recommended that he purchase speculative Loewen Group Capital, Limited Partnership, Series A, Monthly Income Preferred Securities ("LWNPR"). Claimant also alleged that in April 1991, a massive lawsuit was brought in Mississippi state court against the issuer of LWNPR. Claimant asserted that on November 2, 1995, the trial court rendered a verdict awarding plaintiffs \$100,000,000.00 in compensatory, and \$400,000,000.00 as punitive damages. Claimant further asserted that he relied on respondents to recommend high-quality investments. Claimant also asserted that all the information of LWNPR was public information and respondents knew or should have known this information and not recommend that he purchase these highly speculative securities. Claimant contended that respondents breached their fiduciary duty by failing to act in good faith and in the best interest of investing his assets. Claimant further contended that respondents acted intentionally and recklessly by employing devices, schemes and artifices to defraud claimant.

Respondents Dean Witter and Swindells (collectively referred to as "respondents") through their representative and in-house counsel Debra Roth, maintained that claimant's investment objectives were to produce income with a reasonable amount of safety and a small emphasis on growth. Respondents further maintained that Swindells was claimant's broker for 15 years. Respondents also maintained that claimant's account value at that time was approximately \$222,000.00 of which approximately \$90,000.00 consisted of eight preferred stocks rated from A to BBB. Respondents contended that upon reading about Loewen Group ("Group") investment in the newspaper, claimant called Swindells, who was somewhat familiar with the Group. Respondents further contended that this was consistent with the parties prior relationship, where from time to time, claimant would call Swindells to discuss investment ideas. Respondents also contended that the Group stock was rated BBB at the time of these purchases.

Respondents maintained that on January 25, 1996, the Group stock reached a low of 15 5/8. Respondents further maintained that upon seeing the drop in the stock, Swindells made several inquiries to find out why

the stock dropped. Respondents further maintained that Swindells learned about the \$500 million jury award, but believed that the award was grossly inflated due to the excessive punitive damages awarded and would most likely be reconsidered and reduced. Respondents also maintained that on January 26, 1996, claimant called Swindells to discuss the lawsuit and status of the stock. Respondents contended that after a lengthy discussion, Swindells recommended to claimant that he not sell his shares. Respondents contended that notwithstanding Swindells advice not to sell, claimant insisted on selling his 400 shares on January 26, 1996 at 19 1/2. Respondents further contended that on January 29, 1996, the stock closed at 23 3/4. Respondents also contended that the stock was well within claimant's objectives of income with safety. Respondents maintained that they acted in good faith by advising claimant against the sale of the stock.

RELIEF REQUESTED

Claimant Daniel Murphy requested \$3,146.10, plus fees for this action.

Respondents Dean Witter and Swindells requested that the claims of claimant be dismissed in their entirety, plus costs of defending this claim.

AWARD


Pursuant to Rule 10302 of the Code of Arbitration Procedure, a single Public Arbitrator, Roy Steenhoff, was selected to review the matter in controversy between the parties set forth in Submissions to Arbitration signed by claimant Daniel Murphy on September 11, 1996 and by respondents Dean Witter on December 2, 1996 and by respondent Samuel Swindells on December 3, 1996 as required by Rules 10301 and 10302 of the Code of Arbitration Procedure.

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. The claims of claimant Daniel Murphy against respondents Dean Witter and Samuel Swindells are dismissed in their entirety.
2. All other relief requests are denied.
3. The \$125.00 filing fee previously deposited by claimants shall be retained by the NASD Regulation, Inc.

AFFIRMATION

I, **Roy Steenhoff**, do hereby affirm upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.



Roy B. Steenhoff

Date of Decision: April 30, 1997