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**AWARD**  
**NASD Regulation, Inc. Office of Dispute Resolution**

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In the Matter of Arbitration Between

Ottigen, Ltd.

Claimant,

and

No. 96-04945

Dean Witter Reynolds, Inc.

Respondent.

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**REPRESENTATION OF PARTIES**

Claimant, Ottigen, Ltd., ("Ottigen") was represented by Lawrence Fischman, Esquire, of Glastonbury, Connecticut, and Phillips and Murray located in Dallas, Texas.

Respondent, Dean Witter Reynolds, Inc., ("Dean Witter") was represented by Janet Epstein, Esquire, in Witter's in-house counsel for the Respondents.

**CASE INFORMATION**

Claimant's Statement of Claim was filed on or about: November 14, 1996.  
Claimant's Submission Agreement was signed on: October 24, 1996.

Respondent's Statement of Answer was filed on or about: January 22, 1997.  
Respondent's Submission Agreement was signed on: January 10, 1997.

**HEARING INFORMATION**

The hearing was held in: Dallas, Texas on September 16, 1997.

4/11/2092

### CASE SUMMARY

Ottigen, Ltd., a Hong Kong corporation, by and through its' agent, William Leahy, ("Claimant") alleges that due to the inaction of Dean Witter, Claimant lost the opportunity to invest funds from its' Dean Witter accounts, which had they been properly liquidated and transferred, would have profited after being invested by another money manager. Claimant stated that it maintained three (3) separate accounts with Dean Witter: # 450-101021; # 450-100996; and, # 450-101023 ("accounts.") Claimant said that Dean Witter was paid a quarterly flat fee which was to be based on the value of the assets in the accounts, in exchange for advising the Dean Witter selected investment advisor, as well as for executing trades, maintaining the custody of the securities in the accounts and providing reports on the accounts.

Claimant alleged that its' instruction to liquidate and transfer the accounts to a new custodian, in writing, was a confirmation of Claimant's oral instructions to do the same on September 6, 1996. Claimant asserted that these instructions were not executed until September 13, 1996, although received in Dean Witter's Office on September 9, 1996. Claimant further asserted that the accounts declined in value by \$6, 740.65 between September 9th and the 13th. Furthermore, Claimant asserted that due to its' inability to invest the \$838, 488.00 from the accounts, \$49, 074.00 was lost between the September 12, 1996 date that Claimant should have had access to the funds from their accounts and the September 24, 1996 date that the Claimant actually had access to the funds. Claimant alleged that this amount was based upon the proven success of the new custodians who would have invested the funds from the accounts if Dean Witter had acted in a timely fashion in transferring the funds from the liquidated accounts.

Dean Witter Reynolds, Inc. ("Respondent,") alleged that the Claimant provided Dean Witter with incomplete paperwork and conflicting transfer instructions which caused unnecessary confusion and delay in the transfer of the Claimant's accounts. Respondent alleged that when the Claimant's agent filled out the Transfer Request Forms necessary for the liquidation and transfer of the accounts, Claimant's agent not only checked on all three boxes which would indicate that the transfer was to be done electronically by an Automated Customer Account Transfer ("ACAT") but also handwrote a note at the top of two of the forms which read: "Non-ACAT." Respondent asserted that Claimant further confused the transfer through its direction under Section 2 of the form, pertinent part titled "Brokerage or Trust Account Transfer," and read, "To transfer your entire account, please skip to section 3. To transfer only part of your account, please complete the following information." Respondent asserted that under this section to transfer only part of the account, Claimant wrote the directive to: "Liq. & transfer proceeds" for Account # 450-101020; "LIQ. ALL - Transfer Proceeds" for Account # 450-101023; and, "LIQ. ALL - Transfer Proceeds" for Account # 450-100996. Also, Respondent pointed to the lack of Claimant's Revocation of Power of Attorney, which would have properly terminated the services of the money manager selected by Dean Witter, as per the Dean Witter Access New Account Package agreed upon by both parties.

Respondent did assert that after the instructions were received on September 9, 1996, the forms were forwarded to Dean Witter's ACAT department in New York, and the accounts were liquidated on September 13, 1996, and pursuant to Claimant's instructions on September 24, 1996, the accounts were transferred to Claimant directly. Finally, Respondent alleged the \$55,815.00 in damages alleged by the Claimant were unrealistic with respect to the loss of that money during the time frame set forth by Claimant's was both unrealistic as well as speculative. Respondents asserted that an ACAT Transfer takes between seven (7) to ten (10) days to complete, and even if the Claimant's instructions had been clear, the Accounts would have transferred between September 20 and 23, instead of the September 24 date that they were actually received by Claimant. Furthermore, Respondent alleged that the amount of the loss is speculative, because there is nothing which absolutely indicated that the funds from the accounts would have been invested in the manner which their return had been calculated by the Claimant. Therefore, Respondent denied any wrongdoing with respect to the liquidation and transfer of Claimant's accounts.

#### **RELIEF REQUESTED**

Claimant, Ottigen, Ltd., requested an award for \$55,815.00, in addition to punitive damages, interest, and costs and attorneys' fees relating to this matter.

Respondent, Dean Witter Reynolds Inc., requested that the claims asserted against it be dismissed in their entirety and that it be awarded its costs and attorneys' fees.

#### **OTHER ISSUES CONSIDERED AND DECIDED**

Upon review of the file and the representations made by/on behalf of Claimant, Ottigen, Ltd., the undersigned arbitrators have determined that Respondent, Dean Witter Reynolds Inc., has been properly served with the Statement of Claim pursuant to §§ 10302 and 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondent, Dean Witter Reynolds, Inc., had received due notice of the hearing as required under § 10318 of the Code.

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 the NASD Regulation, Inc. Office of Dispute Resolution.

#### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. That the Respondents Dean Witter Reynolds, Inc. is liable for and shall pay to Claimant Ottigen, Ltd. the sum of \$42,000.00 in damages plus interest of 10% from the date of service of the award until award is paid in full;
2. That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

#### **FORUM FEES**

Forum fees are calculated at the rate of \$500.00 per hearing session and \$300 for each pre-hearing conference, if any. There were no pre-hearing conferences and there were two (2) sessions x \$500.00 = \$1,000.00 in forum fees. Pursuant to § 10332(b) of the NASD Code of Arbitration Procedure (the "Code") a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less. Pursuant to § 10332 of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee of \$150.00 and shall retain as forum fees the hearing session deposit of \$500.00 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Claimant, Ottigen, Ltd.

Pursuant to § 10333 of the Code, Respondent Dean Witter Reynolds, Inc. is liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution its non-refundable member surcharge of \$300.00.

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Respondents Dean Witter Reynolds, Inc. is liable for and shall pay NASD Regulation, Inc. Office of Dispute Resolution all outstanding forum fees in the sum of \$2,000.00. Respondent Dean Witter Reynolds, Inc. is liable for and shall reimburse Ottigen Ltd. its hearing session deposit \$500.00.

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

**Concurring Arbitrators' Signatures**

/s/ Joann Peters

December 18, 1997

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Joann Peters, Esq.  
Chairperson  
Public Arbitrator

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Dated:

/s/ Jack W. Rains

December 22, 1997

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Jack W. Rains, Esq.  
Panelist  
Public Arbitrator

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Dated: Jack W. Rains, Esq.  
Panelist  
Public Arbitrator

/s/ Riley R. Robbins

December 22, 1997

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Riley R. Robbins  
Panelist  
Industry Arbitrator

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Dated: