

**NASD REGULATION, INC. AWARD**

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

**In the Matter of the Arbitration Between**

**Name of Claimant**

**Dean Witter Reynolds, Inc.**

**98-00402**

**Name of Respondent**

**James P. Haller**

**REPRESENTATION**

For Claimant Dean Witter Reynolds, Inc. ("Dean Witter"): Michael S. Taaffe, Esq., Abel Band Russell Collier Pitchford, Sarasota, Florida.

Respondent James P. Haller ("Respondent") appeared pro se.

**CASE INFORMATION**

Statement of Claim filed: February 2, 1998.

Claimant: Dean Witter's Submission Agreement signed: January 22, 1998.

Claimant: Dean Witter's Amended Statement of Claim filed: May 18, 1998.

Statement of Answer filed by Respondent: May 6, 1998.

Respondent's Amended Statement of Answer filed: May 29, 1998.

Respondent's Submission Agreement signed: May 5, 1998.

**HEARING INFORMATION**

On August 3, 1998, the arbitration panel conducted a telephonic pre-hearing which lasted one (1) session.

On September 30, October 1 and 2, 1998, hearings lasting five (5) sessions were conducted with the arbitration panel.

Page Two  
Award 93-00402

### CASE SUMMARY

Claimant Dean Witter alleged the following: in connection with his employment with Dean Witter, for value received, on November 17, 1995, Respondent executed and delivered to Dean Witter a Promissory Note (the "Note") in the principal amount of \$311,115.00, payable in four (4) equal installments; that the note provided, *inter alia*, that if Respondent died while employed by Dean Witter or 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 death or termination of employment; that Respondent voluntarily terminated his employment with Dean Witter effective February 7, 1998, at which time all outstanding amounts of principal under the Note became immediately due and payable; that Respondent breached the Note by failing to pay the principal sum of \$311,115.00 plus accrued interest at the rate of 7% per annum amounting to \$30,623.10 and totaling \$342,738.10, all of which is now due and owing under the Note.

Pursuant to Respondent's Dean Witter Account Executive Incentive Compensation Agreement And Addendum To Account Executive Incentive Compensation Agreement (hereinafter collectively, the "Agreements") executed on November 17, 1995, Dean Witter agreed to pay Respondent incentive compensation and, in return, Respondent agreed to reimburse Dean Witter a pro-rated portion of the incentive compensation if he was to voluntarily terminate his employment with Dean Witter. The pro-rated portion amounted to an amount equal to the incentive compensation paid to Respondent reduced by 1/48th for each month Respondent was employed by Dean Witter. Pursuant to the Agreements, Respondent received incentive compensation of \$112,056.00. Based on the 1/48th per month reduction of the incentive compensation amount during Respondent's tenure with Dean Witter, Respondent owes Dean Witter \$54,597.00 of incentive compensation plus 10% statutory interest of \$7,479.00 amounting in total to \$62,076.00.

Per Respondent's Dean Witter Account Executive Incentive Compensation Agreement (the "Compensation Agreement"), Respondent agreed for a period of one year following his termination with Dean Witter and within a one hundred mile radius of his former Dean Witter branch office, not to solicit or attempt to solicit, directly or indirectly, any of Dean Witter's customers who were served by or whose name became known to Respondent while employed by Dean Witter. Despite agreeing to the non-solicitation provision, Respondent admitted to soliciting and taking more than 70% of the accounts he serviced at Dean Witter to his current employer Robert W. Baird, Inc. Dean Witter claims it is entitled to lost revenues generated from accounts taken by Respondent. At the hearing, the arbitration panel was presented with evidence wherein they agreed to consider damages estimates resulting from Respondent's breach of Compensation Agreement ranging from \$412,876.11 to \$603,000.00.

Respondent alleged that while being recruited by Dean Witter, he requested and was promised a substantial flow of syndicate business (IPO's and secondary's). Respondent further alleged that he was promised that he would not be pressured to sell Dean Witter Mutual Funds. In addition, Respondent alleged that his availability of IPO's and secondary's at Dean Witter was substantially below what he was promised. Therefore, since the alleged conditions did not improve, Respondent was forced to leave Dean Witter.

Page Three  
Award 98-00402

### RELIEF REQUESTED

Claimant requested that it be awarded the outstanding Note amount and accrued interest totaling \$342,738.10; plus the remaining principal sum of the incentive compensation and statutory interest owed of \$62,076.00; estimated lost revenues ranging from \$412,876.11 up to \$603,000.00 as presented at the hearing; the costs of this arbitration; all reasonable attorneys' fees amounting to \$21,086.83; and, any and all further relief which this Panel deems just and proper. In sum, Claimant requested the arbitration panel consider total damages ranging from \$838,777.04 to \$1,028,900.93.

### 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 Regulation, Inc.

On September 22, 1998, Respondent filed a Motion to Postpone the hearings scheduled to commence on September 30, 1998, which was denied by the panel.

### AWARD

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

1. Respondent is found liable and shall pay to Claimant the sum of \$360,000.00.
2. Claimant and Respondent shall pay their own respective fees and costs incurred in connection with this matter.
3. Forum Fees are to be split equally among the parties.

### FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure (the "Code"), the Panel has assessed forum fees in the amount of \$6,000.00 (6 sessions x \$1,000.00 per session) as follows:

1. Claimant Dean Witter is hereby assessed the sum of \$3,000.00 for which NASD Regulation, Inc. shall retain the \$750.00 hearing session deposit previously paid by Claimant in partial satisfaction thereof, leaving a balance due in the amount of \$2,250.00.
2. Respondent is hereby assessed the sum of \$3,000.00 for which NASD Regulation, Inc. shall retain the \$750 postponement fee deposit previously paid by the Respondent in partial satisfaction thereof, leaving a balance due in the amount of \$2,250.00.

Page Four  
Award 98-00402

OTHER FEES

Pursuant to Rule 10332 of the Code, the Claimant has paid to NASD Regulation, Inc. the claim filing fee of \$500.00.

Pursuant to Rule 10333 of the Code, the Claimant has paid to NASD Regulation, Inc. the \$1,500.00 member surcharge previously invoiced.

Pursuant to Rule 10333(d) Claimant has paid to NASD Regulation, Inc. the pre-hearing process fee of \$600.00 previously invoiced.

Pursuant to Rule 10333(d) Claimant shall pay to NASD Regulation, Inc. the hearing process fee of \$2,500.00.

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

Concurring Arbitrators' Signatures

/s/  
Jerrold E. Slutzky, Esq.

Industry/Chairman

/s/  
Augusto V. Perrotta

Industry/Panelist

/s/  
Thomas R. Carlsen

Industry/Panelist

Date of Decision: December 15, 1998