

N.A.S.D. AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Frank G. Mauro

Case #97-02110

Names of Respondents

Dean Witter Reynolds Inc.
Harry T. Haas

REPRESENTATION

Georgia. Sims, Moss, Kline & Davis, LLP, Atlanta,

Rogers & Hardin, Atlanta, Georgia.

CASE INFORMATION

Statement of Claim filed: April 28, 1997.

Claimant's Reply to Dean Witter Reynolds, Inc's Counterclaim filed on or about July 18, 1997.

Claimant's Submission Agreement signed on: April 18, 1997.

Statement of Counterclaim of Dean Witter Reynolds, Inc. and Answer of Dean Witter Reynolds, Inc. and Harry T. Haas to Statement of Claim by Frank G. Mauro filed on: July 14, 1997.

Respondent Dean Witter Reynolds, Inc's ("DWR") Submission Agreement signed on: June 26, 1997.

Respondent Harry T. Haas' Submission Agreement signed on: June 25, 1997.

HEARING INFORMATION

A pre-hearing conference was conducted with the arbitration panel on September 9, 1997. Two pre-hearing conferences were conducted with the Chairperson on February 23, 1998 and March 20, 1998. In addition, ten hearing sessions were conducted in this matter on March 30, 31 and April 1, 1998 and June 9 and 10, 1998 in Atlanta, Georgia.

CASE SUMMARY

Claimant alleged that he and his branch manager, Respondent Haas, acting in the course and scope of

Haas' employment with Respondent Dean Witter Reynolds, Inc. negotiated an arrangement whereby DWR granted Mr. Mauro "retirement" status as a result of which Mr. Mauro terminated his registration and left his book of business with DWR on July 15, 1996 and also agreed to retire from the retail securities industry. Claimant further alleged that his "retirement" classification was expressly granted by DWR as recognition of Claimant's past substantial production and so that Claimant could preserve substantial deferred compensation in the form of cash, stock and stock options, most of which would have otherwise been forfeited if Claimant simply resigned. Claimant also alleged that notwithstanding that DWR did in fact classify him as retired, DWR and Haas later refused to honor their arrangements with him, causing his deferred compensation to be forfeited. Claimant Mauro also denied any liability on DWR's counterclaim, which sought to recover monies allegedly due pursuant to a forgivable Promissory Note dated June 10, 1993. Alternatively, Mr. Mauro argued that the Note should be prorated to the final eleven months thereof. Based on his allegations, Claimant argued that the Respondents committed acts of fraud and deceit; recklessly and negligently abandoned their duties to him; misappropriated his deferred compensation benefits; breached their implied duties of good faith to help him promote his business; caused him to suffer emotional distress and anguish; and breached NASD Rules that mandate a broker dealer's high standard of commercial honor.

Respondents contended that Claimant is indebted to Dean Witter Reynolds, Inc. for two payments on his Promissory Note he failed to repay, including interest and attorney's fees and costs. Respondents denied Claimant is entitled to any deferred compensation, which was conditioned upon Claimant's continued employment and which would not have been payable until long after he resigned. Respondents further denied that Claimant was eligible to retire under Dean Witter Reynolds, Inc. policies. Respondents denied that they owe Claimant anything. Additionally, Respondents raised affirmative defenses as set forth in their Answer.

RELIEF REQUESTED

Claimant Mauro requested damages against Dean Witter Reynolds, Inc. and Harry T. Haas as follows: (i) a 1993 Account Executive productivity Bonus of \$5,928.00 payable on June 30, 1998; (ii) a 1994 Account Executive productivity Bonus of \$65,329.00 payable on June 30, 1999; (iii) a 1994 bonus of \$108,883.00 payable on January 1, 2000 pursuant to a Bonus Agreement dated June 10, 1993; (iv) a 1995 Account Executive Productivity Bonus of \$36,132.00 payable in 710.64 shares of Dean Witter and Discovery Co. on June 30, 2000 (now 1421.28 shares adjusted for 2:1 stock split); (v) a 1995 bonus of \$96,959.00 payable on February 1, 2001 pursuant to a Bonus Agreement dated June 10, 1993; and (vi) options to purchase 166 shares of Dean Witter and Discovery Co. at \$35.12 exercisable on July 15, 1999 (now 332 shares adjusted for 2:1 stock split). Claimant further requested an Award declaring that he "retired" from DWR; declaring the Note to be canceled and satisfied in full; granting him compensatory damages for emotional distress; and, granting him attorney's fees, arbitration costs and exemplary damages. In addition, Claimant requested a dismissal of the counterclaim.

Respondents requested that the Claimant's claim be dismissed and that he be ordered to pay the amounts owed under the Promissory Note, all taxes due, and Dean Witter Reynolds, Inc's fees and costs in defending this claim.

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.

AWARD

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

The Respondent Dean Witter Reynolds, Inc. is liable and shall pay to the Claimant the sum of \$358,172.00, pre-judgment interest specifically excluded. The Claimant is entitled to post-judgment interest in accordance with Rule 10330(h) of the Code of Arbitration Procedure.

All claims against Respondent Harry T. Haas are dismissed in their entirety.

The Claimant Frank G. Mauro is liable on the counterclaim asserted by Dean Witter Reynolds, Inc. and shall pay to Dean Witter Reynolds, Inc. the sum of \$60,747.67 representing principal and interest owed on the Promissory Note plus the sum of \$21,579.12 representing taxes on the third installment of the Promissory Note, prejudgment interest specifically excluded on both of the above amounts. The Respondent Dean Witter is entitled to post-judgment interest in accordance with Rule 10330(h) of the Code of Arbitration Procedure.

All other claims for relief by all parties are denied.

FORUM FEES

Pursuant to Rule 10205c of the Code of Arbitration Procedure, forum fees in the sum of \$8,850.00 (one pre-hearing conference-panel \$750.00 plus two pre-hearing conferences-Chairperson \$600.00 plus 10 sessions x \$750.00) are assessed as follows:

Claimant is assessed the sum of \$4,425.00 less the \$600.00 on deposit in partial satisfaction thereof leaving a balance due in the sum of \$3,825.00.

Respondents are assessed, jointly and severally, the sum of \$4,425.00 less the \$750.00 on deposit in partial satisfaction thereof leaving a balance due in the sum of \$3,675.00.

OTHER FEES

Pursuant to Rule 10333 of the Code of Arbitration Procedure, Respondent Dean Witter Reynolds, Inc. shall pay to NASD Regulation, Inc. the sum of \$50.00 representing the balance of the member surcharge.

Pursuant to Rule 10205 of the Code of Arbitration Procedure, NASD Regulation, Inc. shall retain the \$500.00 claim filing fees previously paid by the Claimant and the Respondent Dean Witter Reynolds, Inc. to NASD Regulation, Inc.

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

Concurring Arbitrators' Signatures
Name

Public/Industry

 /s/
Louise B. Duffy, Esq.

Industry

 /s/
Cynthia M. Sheppard

Industry

 /s/
Christopher S. Bach

Industry

Date of Decision: July 2, 1998