

NASD REGULATION, INC. AWARD

Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

James R. Blackburn, Jr.

96-01533

Names of Respondents

**Dean Witter Reynolds, Inc.
Joseph Piontek
William Piontek**

REPRESENTATION OF PARTIES

For Claimant James R. Blackburn, Jr. ("Blackburn"): Russell L. Forkey, Esq. of the law firm of Russell L. Forkey, P.A., Fort Lauderdale, Florida.

For Respondents Dean Witter Reynolds, Inc. ("DWR") and Joseph Piontek: Laura H. Robison, Esq. of the law firm of Rogers & Hardin, Atlanta, Georgia. For Respondent William Piontek: Sarah B. Estes, Esq. of the law firm of Sutherland, Asbill & Brennan, L.L.P., Atlanta, Georgia.

CASE INFORMATION

Statement of Claim was filed on April 9, 1996. Submission Agreement of Claimant was signed on April 1, 1996.

Joint Statement of Answer was filed by Respondents DWR and Joseph Piontek on July 15, 1996. Submission Agreements of DWR and Joseph Piontek were signed on July 3, 1996.

Statement of Answer was filed by Respondent William Piontek on July 12, 1996.
Submission Agreement of William Piontek was signed on May 21, 1996.

HEARING INFORMATION

The evidentiary hearing was held on September 22, 23, 24, and 25, 1997 in Fort Lauderdale, Florida for a total of eight (8) sessions.

CASE SUMMARY

Claimant alleged that he is a retired Eastern Airlines pilot who has filed claims for fraud and deceit, breach of fiduciary duties, breach of contract, negligence, and, with respect to DWR, negligent supervision regarding the activities of the Dean Witter Pilot Retirement Group. Claimant asserted that these causes of action arise out of the Claimant's IRA investments in two securities, the Dean Witter World Currency Fund, L.P. ("WCF") and the FNMA I/O (203 series) Derivatives ("FNMA I/O"), which were DWR investment products and were solicited by the Respondents. Claimant contended that these investments were unsuitable for him, to whom preservation of capital was the primary consideration; that the Respondents also made misrepresentations of material facts and omitted to state material facts regarding the risks associated with these investments and their lack of liquidity; and, that Claimant was over concentrated in one asset class of investment.

Respondents, DWR, William Piontek and Joseph Piontek, denied the allegations of wrongdoing set forth in the Statement of Claim. Respondents contended that Claimant's investment objectives were, in fact, growth and income; that he had a history of investing a portion of his portfolio in speculative investments; that the investments at issue met his investment objectives; and, that the investments were consistent with Claimant's investment history before, during, and after the time period in question, including his investments at DWR and at numerous other brokerage firms. Respondents specifically stated that Claimant was fully apprised of the risks; that he received a prospectus and signed a subscription agreement for the WCF; and, that he received a research report describing the FNMA I/O. Respondents asserted that Claimant's losses were due to market conditions and his decision to sell when the value of the investments had declined. Respondents further asserted that the sales were unsolicited and made against the recommendation of the Respondents.

In addition to the above defenses, Respondent William Piontek asserted a counterclaim pursuant to Section 57.105, Florida Statutes, contending that Blackburn's claims were totally lacking in merit: that he was not the broker who actually made the recommendations and, therefore, could not be held liable for them even if they were found to be unsuitable.

Claimant denied the allegations of wrongdoing set forth in the counterclaim.

RELIEF REQUESTED

Claimant requested an award in the amount of \$18,333.11, inclusive of legal interest, punitive damages in the amount of \$10,000.00, costs, attorney's fees and other relief the panel deemed appropriate.

Respondents requested dismissal, and sought costs and attorneys' fees pursuant to Section 57.105, Florida Statutes. In his counterclaim, Respondent William Piontek requested costs and attorneys' fees in excess of \$30,000.00.

Claimant requested dismissal of the counterclaim.

OTHER ISSUES CONSIDERED & DECIDED

1. The parties have stipulated that this panel may determine their respective requests for attorney fees.
2. 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. Office of Dispute Resolution.

AWARD

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

1. Respondents DWR, Joseph Piontek, and William Piontek are found not liable and, therefore, all claims against them are hereby dismissed.
2. Claimant's requests for punitive damages, costs, attorney's fees, and other relief are denied.
3. Claimant is found not liable and, therefore, the counterclaim asserted against him is hereby dismissed.
4. Respondents' requests for attorneys' fees and costs are denied.

FORUM FEES

Pursuant to Rule 10332(c) of the NASD Code of Arbitration Procedure ("Code"), a hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Rule 10332(c) of the Code, the panel has assessed forum fees in the amount of \$4,000.00 (4 hearing sessions x \$400.00 per session = \$1,600.00 plus 4 hearing sessions x \$600.00 per session = \$2,400.00).

1. Claimant is assessed the sum of \$1,600.00 for which NASD Regulation, Inc. shall retain the \$400.00 previously deposited in partial satisfaction thereof, leaving a balance due in the sum of \$1,200.00.
2. Respondent DWR is assessed the sum of \$2,400.00 payable to NASD Regulation, Inc.
3. NASD Regulation, Inc. shall retain the non-refundable filing fee of \$100.00 paid by the Claimant.

4. Pursuant to Rule 10332(a) of the Code, Respondent William Piontek shall pay to NASD Regulation, Inc. the \$500.00 past due non-refundable filing fee for his counterclaim.

Fees are payable to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

/s/
Allen J. Kaplan, Esq.
Public Arbitrator, Presiding Chair

/s/
Michael A. Coco
Public Arbitrator

/s/
Joel Margolies
Industry Arbitrator

Date of Decision: 10-23-97