

## **AWARD**

### **NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION**

In the matter of the Arbitration Between

**Name of Claimant**

Vincent Gewalt

v.

Arbitration No.

96-02593

**Name of Respondents**

Dean Witter Reynolds, Inc.  
David Combes

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### **REPRESENTATION OF PARTIES**

Vincent Gewalt ("**Claimant**") was represented by Michelle R. Finch, Esq. and Whitaker Riggs, Esq., Finch Cosho, P.A., Boise, Idaho.

Dean Witter Reynolds, Inc. and David Combes ("**Respondents**") were represented by Janet T. Epstein, Esq., Dean Witter Reynolds, Inc., San Francisco, California.

### **CASE INFORMATION**

Claimant's Statement of Claim was filed on or about July 15, 1996. Claimant's Submission Agreement was signed on May 22, 1996. Claimant's Response to the Motion to Dismiss was filed on or about September 27, 1996.

The Joint Statement of Answer and Motion to Dismiss was filed on or about September 12, 1996. The Submission Agreement for Dean Witter Reynolds, Inc. was signed on September 12, 1996. The Submission Agreement for David Combes was signed on July 30, 1996.

### **HEARING INFORMATION**

Pre-hearing conferences were held on February 14, 1996 and April 16, 1996. Each constituted one session.

The hearing was held on June 4, 1997 in Boise, Idaho for a total of 2 sessions.

### **CASE SUMMARY**

Claimant alleges that the Respondents made negligent misrepresentations regarding the return associated with Blackrock Strategic Term Trust purchased by the Claimant and failed to fully explain the investment strategies and risks associated with Claimant's desired investment program and results. Claimant further alleges that the Respondents failed to provide a prospectus to the Claimant prior to the sale. Additionally, the Claimant alleges that upon his decision to move his investment to the Blackrock Income Trust the Respondents failed to advise him of any fees associated with transfer.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically argued investment strategies and risks were fully explained to the Claimant and that Claimant understood and accepted the market risks associated with his investment. Respondents further argued that all fees and charges were fully disclosed to the Claimant.

### **RELIEF REQUESTED**

Claimant requested an award in excess of \$19,000 plus costs and approximately \$7000 in attorneys' fees.

Respondents requested that the claims asserted against them be denied in their entirety, and they also asked for attorneys' fees of approximately \$7500.

### **ISSUES CONSIDERED & DECIDED**

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains on file with NASD Regulation, Inc., Office of Dispute Resolution.

At a pre-hearing conference, Dean Witter's Motion to Dismiss was considered and denied.

At the hearing, Gewalt's Motion to Exclude Evidence was considered and denied.

### **AWARD**

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

1. Dean Witter shall pay to Claimant the sum of \$9000.
2. Dean Witter and David Combes, jointly and severally, shall pay to Claimant the sum of \$6000 (additional to the \$9000 in 1., above)

3. The parties shall bear their own costs and attorneys' fees.
4. The claims against Dean Witter and Mr. Combes for violations of Rule 10b-5 and of the Idaho Securities Code are dismissed. The liability amounts found in this matter rest solely on findings of negligence and failure to fully advise the customer after undertaking to do so.

### FORUM FEES

Forum fees are calculated at the rate of \$300 per hearing session and \$300 for each prehearing conference, if any. There were 2 hearing sessions x \$300, plus 2 pre-hearing conferences x \$300 = \$1200 in total forum fees. Pursuant to Rule 10332(b) of the NASD Regulation, Inc., Office of Dispute Resolution 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 Rule 10332(c) of the Code of Arbitration Procedure, Dean Witter is assessed \$950.00 and Claimant is assessed forum fees of \$250.00.

Total Fees	
2 Hearing Sessions @ \$300.00 =	\$ 600.00
2 Pre-Hearing Conf. @ \$300.00 =	\$ 600.00
Total	<u>\$1,200.00</u>

Claimant's Deposit	\$ 300.00
Forum Fees Assessed	<u>\$ 250.00</u>
Balance < Refund >	\$ < 50.00 >


Dean Witter Reynolds' Deposit	\$ 0.00
Forum Fees Assessed	<u>\$ 950.00</u>
Balance	\$ 950.00

Pursuant to Rule 10332(c) of the Code, NASD Regulation, Inc. shall retain the non-refundable filing fee in the amount of \$100.

Pursuant to Rule 10333 of the Code, the NASD shall retain the member surcharge fee in the amount of \$200 previously paid by Dean Witter Reynolds, Inc.

Fees are payable to the NASD Regulation, Inc.

Dated:

  
A. Robert Thorup, Esq.  
Public Arbitrator, Presiding Arbitrator

  
June 24, 1997

Date Served: 06/24/97