

**AWARD**

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

In the matter of the Arbitration Between

**Name of Claimant(s)**

Bruce Werner

Arbitration  
No. 96-02605

**Name of Respondent(s)**

Gilford Securities Inc.  
Chester J. Dudzik

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**REPRESENTATION**

For Claimant: Jeffrey M. Jones, Esq., Law Office of Archibald M. Mull, III, Old Sacramento, California

For Respondent Gilford Securities Inc.: Joel Levinson, Esq.,  
Gilford Securities Inc., New York, New York

For Respondent Chester J. Dudzik: No appearance at hearing

**CASE INFORMATION**

Statement of Claim filed: June 12, 1996

Claimant's Submission Agreement signed: June 11, 1996

Joint Statement of Answer filed by Respondents: August 13, 1996

Respondent Gilford Securities, Inc.'s Submission Agreement signed:  
August 12, 1996

Respondent Chester J. Dudzik did not file a Submission Agreement. However, he is subject to NASD Regulation, Inc. (NASDR) jurisdiction in accordance with Section 10301 of the NASDR Code of Arbitration Procedure.

**HEARING INFORMATION**

Pre-Hearing Conference Date(s)/Session(s):

December 18, 1996 (one session)

February 26, 1997 (one session)

March 14, 1997 (one session)

Hearing Date(s)/Session(s): December 2, 1997 (two sessions)  
December 3, 1997 (two sessions)  
December 4, 1997 (two sessions)

Hearing Location: San Francisco, California

#### **CASE SUMMARY**

Claimant alleged that he filed the above-captioned dispute for losses and damages suffered by Claimant in connection with various inappropriate and unsuitable investments recommended to him by Respondents, churning, in-and-out trading, commission-motivated buying and selling, misrepresentations about the appropriateness of the investments, misrepresentations regarding the handling of Claimant's account and the improper supervision of Chester J. Dudzik and Claimant's account by Respondent Gilford Securities Inc. (Gilford). Claimant further alleged violation of the National Association of Securities Dealers' Rules of Fair Practice; breach of fiduciary duty; violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5, Section 29(b) of the Securities Exchange Act of 1934, and Section 12(2) of the Federal Securities Act of 1933; fraud and deceit; breach of contract; negligence; and negligent infliction of emotional distress.

Respondents alleged that there is no private cause of action for violation of the Rules of the Self-Regulatory Organizations; the Statement of Claim should be dismissed on federal statute of limitations grounds; and that there is no claim for breach of fiduciary duty. Respondents further alleged that the Statement of Claim should be dismissed on the merits; the Claimant was suitable for the investments in question; Claimant's account was on margin prior to its transfer to Gilford, that Claimant was always aware that his account was on margin, and that Claimant was suitable for trading on margin; there is no claim for unauthorized trading; there are no claims for churning and misrepresentation; there was no agreement regarding commissions; there were no improprieties regarding Mr. Dudzik giving a check to the Claimant; and the Claimant affirmed that he was satisfied with the manner in which Gilford handled his account. Respondents also asserted affirmative defenses.

#### **RELIEF REQUESTED**

Claimant's Claim requested:

1. Damages of no less than \$100,000.00;
2. General damages;
3. Rescission of all transactions and return of Claimant's investment of \$81,473.07, plus ten percent (10%) interest from the date of the investments, less any payments received by Claimant on the account;

4. Emotional distress damages;
5. Punitive damages;
6. Attorney's fees; and
7. Costs.

Respondents requested that the Statement of Claim be dismissed in its entirety and that judgment be rendered in favor of Respondents.

#### OTHER ISSUES CONSIDERED AND DECIDED

On or about May 8, 1997, the panel was advised of the settlement reached between Claimant and Auerbach, Pollak & Richardson, Inc.

At the outset of the evidentiary hearing, Joel Levinson advised the panel that he withdrew as counsel for Respondent Chester J. Dudzik. The panel determined that Mr. Dudzik received proper notice of the hearing and ruled to proceed in his absence.

The parties have agreed that the Award in this matter may be executed in either 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 NASDR.

#### AWARD

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

1. Gilford Securities Inc.'s Motion to Dismiss on grounds of the Statute of Limitations is denied.

2. Respondents are jointly and severally liable for and shall pay to Claimant the sum of \$81,150.00.

3. The arbitrators find that Respondent, Chester J. Dudzik acted fraudulently and maliciously by intentionally misrepresenting the amount of commissions to be charged; by falsely stating that discrepancies in the account were clerical errors that would be rectified and in fact, never were; by making unauthorized transactions; by falsely stating the amount for which certain securities were bought or sold; by misrepresenting the value of the account; and by advising the Claimant to use a false address for the account in order to circumvent the fact that Respondent was not registered to trade in the State of Maine which was Claimant's actual residence.

By reason of the foregoing, Respondent Chester J. Dudzik is solely liable for and shall pay to Claimant the sum of \$20,000.00 in punitive damages pursuant to Mastrobuono v. Shearson Lehman Hutton, Inc. 115 S.Ct. 1212(1995); California Civil Code Section 3294.

The arbitrators further find that the evidence failed to establish that Respondent Gilford Securities Inc. authorized or ratified the misrepresentations made by Mr. Dudzik or that the hiring in and of itself formed the basis of an award of punitive damages and hereby deny and dismiss Claimant's request for punitive damages as to Respondent Gilford Securities Inc.

4. The parties shall each bear their respective costs including attorney's fees.

#### FORUM FEES

Pursuant to Section 10332(c) of the Code of Arbitration Procedure, the following forum fees are assessed: NASDR shall refund the \$750.00 hearing session deposit previously paid by Claimant. Forum fees are assessed against Respondent Gilford Securities Inc. in the amount of \$5,850.00, calculated as follows: One pre-hearing session times \$750.00, plus two pre-hearing sessions times \$300.00, plus six hearing sessions times \$750.00.

Fees are payable to NASD Regulation, Inc.

#### ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Helen B. Culiner, Esq.	Public Arbitrator
Lawrence E. Goldberg, CPA	Public Arbitrator
Andrew R. Epstein	Industry Arbitrator

#### Concurring Arbitrators' Signatures

Helen B. Culiner  
Helen B. Culiner, Esq.

\_\_\_\_\_  
Lawrence E. Goldberg, CPA

\_\_\_\_\_  
Andrew R. Epstein

Date of Decision: \_\_\_\_\_

Date Served: 02/20/98

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Public Arbitrator

Lawrence E. Goldberg, CPA

Public Arbitrator

Andrew R. Epstein

Industry Arbitrator

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Lawrence E. Goldberg, CPA

  
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Andrew R. Epstein

Date Served: 02/20/98

Date of Decision: 2/17/98