

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

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In the Matter of the Arbitration Between

Name of Claimant

Warren C. Gearrick

96-03293

Name of Respondents

Dean Witter Reynolds Inc.  
William Piontek

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**REPRESENTATION**

For Claimant Warren C. Gearrick ("Claimant") appeared Terrence Tormey, Esq. located in Hazlet, New Jersey.

For Respondent Dean Witter Reynolds Inc. ("Respondent Dean Witter") appeared Laura Robison, Esq., of the law firm of Rogers & Hardin located in Atlanta, Georgia.

For Respondent William Piontek ("Respondent Piontek") appeared Sarah B. Estes, Esq., of the law firm of Sutherland, Asbill & Brennan located in Atlanta, Georgia.

**CASE INFORMATION**

Claimants Statement of Claim was filed on July 3, 1996.

Claimant's Submission Agreement was signed on July 3, 1996.

A Statement of Answer and Motion to Dismiss was filed by Respondent Dean Witter Reynolds Inc. on October 1, 1996.

Respondent Dean Witter Reynolds Inc.'s Submission Agreement was signed on August 1996.

A Statement of Answer and Counterclaim was filed by Respondent William Piontek on September 30, 1996.

Respondent William Piontek's Amended Response to the Statement of Claim was filed on October 2, 1996.

Respondent William Piontek's Submission Agreement was signed on October 25, 1996.

**HEARING INFORMATION**

Pre-Hearing Conference:	January 30, 1997	-	1 Session
Hearing Dates/Sessions:	February 10, 1997	-	2 Sessions
	February 11, 1997	-	3 Sessions

The hearing were held under the auspices of NASD Regulation in New York City, New York.

### **CASE SUMMARY**

Claimant alleged that in 1988 he began doing business with Dean Witter and Piontek. Claimant alleged that he was at all relevant times and still is a pilot. During Claimant's business relationship with Piontek, Claimant rarely spoke to Piontek because of his traveling schedule. Claimant asserted that he trusted Piontek due to his relationship with claimant's co-workers and never paid much attention to what was occurring in the accounts managed by Piontek. Claimant further asserted that he later realized he owned securities that were either not explained to him and/or were purchased without his knowledge. Claimant also asserted that once he began researching these investments, he learned that he suffered significant losses.

Respondent Piontek maintained that claimant started to do business with Dean Witter in 1984, not 1988. Respondent Piontek further maintained that claimant's account was serviced by a group of brokers at Dean Witter who marketed their services as the "Dean Witter Pilot Retirement Group", of which he was a member. Respondent Piontek also maintained that the gist of claimant's claim is that three investments, Republic of Finland Government Bonds ("FGB"), the Dean Witter World Currency Fund ("DWWC") and Fannie Mae Interest Only Bonds ("FNMA"), were either not explained to him and/or purchased without his consent. Respondent Piontek contended that Claimant's accounts were non-discretionary accounts and all investments were explained to Claimant prior to the transactions being executed and Claimant authorized all the investments in advance. Respondent Piontek also contended that claimant received confirmation slips in the mail days after every trade that was made in his account as well as monthly statements reflecting the investments in the account.

Respondent Piontek in his counterclaim against claimant alleged that his reputation has been damaged by the inaccuracies contained in the Statement of Claim. Respondent Piontek further alleged that he explained to claimant that he did not suffer a loss on the investment in FGB, and explained how to use the account statement to compute the profits. Respondent Piontek also alleged that claimant brought this action as a "nuisance suit" in an attempt to obtain an undeserved monetary award.

Respondent Dean Witter maintained that claimant's claim are without legal basis and are unsupported by facts. Respondent Dean Witter maintained that claimant authorized the trades, but in the event he did not, claimant ratified the transaction, made at least three and up to six years ago. Respondent

Dean Witter also maintained that claimant never complained to management about his accounts and continues to hold one of the investments today. Respondent Dean Witter contended that claimant actually lost money in only one of the three securities. Respondent Dean Witter further contended that it is their understanding that each of these investments were explained to and discussed with claimant at the time of the purchase. Respondent Dean Witter also contended that claimant signed a subscription agreement for DWWC acknowledging his receipt of a prospectus which described the investment in detail and authorizing the purchase. Respondent Dean Witter maintained that claimant misrepresented that he had lost money with FGB, when in fact he made a profit of \$8,000.00. Respondent Dean Witter further maintained that claimant still owns his FNMA bonds and continues to earn interest.

### **RELIEF REQUESTED**

Claimant requested \$76,231.10 in compensatory damages, interest at 8% from sale date up to and including hearing date, filing and hearing costs, the panel is asked to consider awarding the amount of earning lost to date of settlement or award, plus attorneys' fees and other relief the panel deems just and

proper.

Respondent Dean Witter Reynolds Inc. requested that the Statement of Claim be dismissed in its entirety and that the costs of this proceeding be assessed against Mr. Gearrick. Respondent Dean Witter further requests that Mr. Gearrick reimburse Dean Witter for its attorneys' fees in defending this action.

Respondent William Piontek requested that the Statement of Claim be dismissed with prejudice, that the panel award Piontek an amount sufficient to pay his reasonable attorneys' fees and other expenses incurred as a result of having to defend this claim in an amount to be proved at the hearing.

#### **OTHER ISSUES CONSIDERED & DECIDED**

Respondent Dean Witter submitted to the panel its Motion to Dismiss asserting no cause of action exists for a violation of NASD Rules as is alleged as claimant's sole cause of action. Claimant's alleged that Dean Witter and Piontek violated the NASD's Rules of Fair Trade Practice governing unauthorized transactions. The panel reviewed and considered the motion and the motion was denied.

The arbitration panel considered respondent Piontek's Motion to preclude the claimant from expanding his case to include claims which were not asserted in the Statement of Claim. The panel denied the motion.

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 NASD Regulation.

#### **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. The claims of Claimant Warren C. Gearrick against Respondents Dean Witter Reynolds Inc. and William Piontek are dismissed, with prejudice.
2. Claimants claims for interest are hereby denied.
3. All other relief requested by claimant is hereby denied.
4. Respondent Dean Witter Reynolds Inc.'s claim for costs and attorneys' fees are hereby denied.
5. Respondent Piontek's counterclaim is hereby denied.
6. Claimant Warren C. Gearrick be and is hereby liable and shall pay to Respondent William Piontek attorneys' fees in the sum of \$10,000.00.

#### **FORUM FEES**

Pursuant to Section 10332 of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation shall retain the \$150.00 non-refundable filing fee previously deposited by claimant and have assessed the following Forum Fees:

1 Pre-hearing conference x \$300.00	=	+	\$ 300.00
5 hearing sessions x \$500.00	=	+	\$2,500.00
Total outstanding	=		\$2,800.00

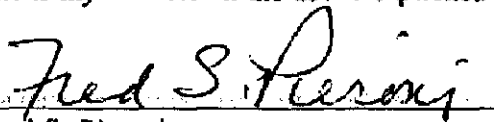
Claimant is liable and shall pay to NASD Regulation, Inc. the sum of \$1,400.00 which represents one-half of the forum fees assessed in this matter. However, Claimant previously deposited \$500.00 with NASD Regulation. Therefore, the amount due from Claimant is \$900.00

Respondents be and are hereby liable jointly and severally and shall pay to NASD Regulation the sum of \$1,400.00

Fees are payable to the National Association of Securities Dealers Regulation, Inc.

**ARBITRATORS' SIGNATURES**

I, **Fred S. Pieroni**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules that this is my decision in the above-captioned matter.

  
Fred S. Pieroni  
Public - Chairperson

I, **Anne Cugliani**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules that this is my decision in the above-captioned matter.

\_\_\_\_\_  
Anne Cugliani  
Public Arbitrator

I, **Frank G. Piazza**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules that this is my decision in the above-captioned matter.

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Frank G. Piazza  
Industry Arbitrator

Date of Decision: **March 27, 1997**

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Frank G. Piazza  
Industry Arbitrator

Date of Decision: March 27, 1997