

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Frank T. Pascarelli

NASD CASE NO. 96-04667

Name of Respondent

Dean Witter Reynolds Inc.

REPRESENTATION

For Claimant: Julie E. Fox, Esq. of Ackerman, Link & Sartory, P.A., West Palm Beach, Florida.

For Respondent: Joseph C. Coates, III, Esq. of Steel Hector & Davis LLP, West Palm Beach, Florida.

CASE INFORMATION

Statement of Claim filed on October 21, 1996. Claimant's Submission Agreement signed on October 16, 1996.

Statement of Answer filed by Respondent on December 17, 1996. Respondent's Submission Agreement signed on January 29, 1998 by William B. Peterson, First Vice President of Dean Witter Reynolds Inc. ("Dean Witter").

HEARING INFORMATION

On March 13, 1997, a telephonic pre-hearing conference lasting one (1) session was conducted with the arbitration panel. On October 14, 1997, a telephonic pre-hearing conference lasting one (1) session was conducted with the Chairperson of the arbitration panel. On December 3 and 4, 1997, in Fort Lauderdale, Florida, hearings lasting four (4) sessions were conducted.

CASE SUMMARY

Claimant alleged that he suffered damages caused by several unauthorized trades made by Respondent, including purchases of Dean Witter Latin America Growth Fund and Dean Witter Emerging Markets Fund. Claimant alleged that Lansing B. Price was the registered representative that serviced his account and that in January, 1994, Mr. Price began urging him to liquidate a substantial portion of his account and to reinvest the proceeds in four Dean Witter funds. Claimant further alleged that shortly after he agreed to review an outline to be prepared by Mr. Price, detailing his plan for liquidation and reinvestment, he learned that Mr. Price had sold a large portion of his account and reinvested the proceeds in the aforementioned Dean Witter funds. Claimant asserted that when he questioned Mr. Price, Price stated that he had to move fast in restructuring Claimant's portfolio and assured him that he would be pleased with the purchases. Claimant further asserted that after repeated assurances and promises by Mr. Price that the funds were in his best interest, Claimant finally sold the funds in February, 1995.

Claimant asserted claims against Dean Witter for common law fraud, unauthorized transactions, breach of fiduciary duty, negligence and failure to supervise.

Respondent denied the allegations of wrongdoing contained in the Statement of Claim and maintained that the two mutual fund investments were authorized trades. Respondent asserted that the mutual funds were purchased as a part of a repositioning of the Claimant's portfolio and were not isolated transactions. Respondent further maintained that the Claimant consulted with his broker and approved the trades, and that the Claimant received confirmations and monthly statements disclosing the two trades. Respondent asserted that the Claimant did not complain that the mutual fund purchases were unauthorized until over a year after the purchases and only complained that one of the mutual funds was unauthorized after the broker was killed in a car crash. Respondent further asserted that the Claimant's own testimony demonstrated that he ratified the trades after they were made.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$82,422.84 plus pre-award and post-award interest, in addition to punitive damages, costs and attorneys' fees.

Respondent requested that the Statement of Claim be dismissed in its entirety and that all forum fees and costs be assessed against the Claimant.

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 originals remain on file with NASD Regulation, Inc.

Pursuant to the Claimant's withdrawal of his claim under Florida Statutes Chapter 517 and his claim for attorneys' fees, dated September 29, 1997, the Panel entered an Order at the commencement of the evidentiary hearing dismissing with prejudice the aforementioned claims for relief asserted by Claimant in his Statement of Claim.

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:

1. Claimant's Statement of Claim is dismissed in its entirety.
2. All other claims for relief, including the Claimant's request for punitive damages and the parties' requests for costs, are denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$2,800.00 (four sessions x \$500.00 per session, plus one pre-hearing conference with the Panel x \$500.00 and one pre-hearing conference with the Chairperson x \$300.00) as follows:

1. Claimant is hereby assessed the sum of \$1,400.00 for which NASD Regulation, Inc. shall retain the \$700.00 hearing session deposit previously paid by Claimant in partial satisfaction thereof, leaving a balance due in the amount of \$700.00.
2. Respondent is hereby assessed the sum of \$1,400.00.
3. Respondent shall pay to NASD Regulation, Inc. the sum of \$350.00 representing the member surcharge due and owing pursuant to Rule 10333 of the Code of Arbitration Procedure.
4. NASD Regulation, Inc. shall retain the \$250.00 claim filing fee previously paid by Claimant.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

_____/s/_____
Leo H. Kerns, Esq.
Chairperson

Public

_____/s/_____
Robert J. Hyman, Esq.

Public

_____/s/_____
John Uustal

Industry

Date of Decision: January 30, 1998