

**AWARD**  
**NASD Regulation, Inc.**

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In the matter of the Arbitration Between

Name of Claimant(s)

Norman VanEpps

Arbitration  
No. 98-00073

Name of Respondent(s)

Nationwide Investment Services Corporation

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**REPRESENTATION**

For Claimant: Norman VanEpps, Enumclaw, Washington

For Respondent: Barbara J. Shane, Nationwide Investment Services Corporation, Columbus, Ohio

**CASE INFORMATION**

Statement of Claim filed: January 6, 1998

Additional submissions filed by Claimant: January 11, 1999 and April 8, 1999

Claimant's Submission Agreement signed: January 6, 1998

Statement of Answer filed by Respondent: April 16, 1998

Additional submissions filed by Respondent: January 26, 1999 and April 13, 1999

Respondent's Submission Agreement signed: April 15, 1998

**CASE SUMMARY**

Claimant alleged that Respondent failed to deposit \$10,896.22 of his money into selected mutual funds and further alleged that this was done through willful misconduct to cover for a series of mistakes caused by lack of attention to detail on the part of Respondent and its representatives.

Respondent Nationwide Investment Services Corporation (NISC) alleged that Claimant's claim relates to the TSA rollover from Northern Life to the NEA Valuebuilder 403(b) Annuity (Annuity). Respondent further alleged that the NEA Service Center inadvertently deposited the balance of \$142,381.02 into the NEA Mutual Fund Program rather than the Annuity and alleged that it corrected the error in accordance with business practices commonly used in the securities industry.

#### RELIEF REQUESTED

Claimant requested damages of approximately \$10,896.22.

Respondent requested an award in favor of NISC.

#### OTHER ISSUES CONSIDERED AND DECIDED

None.

#### FINDINGS

Arbitrator, John A. Bender, Jr. finds that the above-captioned matter was filed in connection with a dispute regarding rollover investments which were improperly directed when received by NISC. In the absence of any proof that NISC benefited from the "as of" transaction by pecuniary gain, Mr. Bender further finds as follows:

Because the parties agree that October 20, 1997 was the date the transaction would have been processed but for the error in the direction of the funds, Mr. Bender finds that valuing the deposit according to the values "as of" October 20, 1997 was appropriate under the circumstances. Assuming without deciding that the monies were deposited as of October 20, 1997, into the funds designated by Mr. VanEpps, their gain or loss thereafter could not be a risk suffered by NISC.

In essence, Mr. VanEpps requests that he get the benefit of a mistake made by NISC without having provided consideration for that benefit. That would be inequitable under the circumstances.

#### AWARD

In accordance with the parties' agreement and pursuant to Rule 10303 of the NASD Regulation, Inc. (NASD) Code of Arbitration Procedure, John A. Bender, Jr., Esq. was selected to review and determine the above-captioned matter based on the written submissions filed by the parties. After considering the

pleadings and all written submissions filed by the parties, Mr. Bender has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims by Claimant are dismissed.
2. The parties shall each bear their respective costs including any attorney's fees.

#### FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall refund Claimant's hearing session deposit in the amount of \$300.00. Forum fees shall be assessed against Respondent NISC in the amount of \$300.00, calculated as follows: One hearing session times \$300.00.

Fees are payable to NASD Regulation, Inc.

#### OTHER FEES

Pursuant to Rule 10333 of the Code of Arbitration Procedure, Respondent shall pay to the NASD the \$400.00 member surcharge previously invoiced.

#### PRESIDING ARBITRATOR

Name ..... Public / Industry

John A. Bender, Jr., Esq.

Public Arbitrator

Presiding Arbitrator's Signature

  
John A. Bender, Jr., Esq.

Date of Decision:

5/24/99

Date Served:

MAY 28 1999