

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimants

Mark Burgess and Mitchell Burgess

Case Number: 20-00852

vs.

Respondent

Geneos Wealth Management, Inc.

Hearing Site: Kansas City, Missouri

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Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

Nature of the Dispute: Customers vs. Member

This case was decided by an all-public panel.

**REPRESENTATION OF PARTIES**

For Claimants Mark Burgess and Mitchell Burgess, hereinafter collectively referred to as “Claimants”: Alan L. Rosca, Esq., Goldman Scarlato & Penny PC, Beachwood, Ohio and Paul Scarlato, Esq., Christian A. Pfeiffer, Esq., and Brendan P. McDonnell, Esq., Goldman Scarlato & Penny PC, Conshohocken, Pennsylvania.\*

For Respondent Geneos Wealth Management, Inc. (“Respondent”): Victoria H. Buter, Esq., Kutak Rock LLP, Omaha, Nebraska.

\*FINRA recorded the appearance of Claimants’ counsel at the time of filing of the Statement of Claim. Counsel’s representation of Claimants may have ended with the parties’ settlement. Please see the Other Issues Considered and Decided section of this Award for information on whether Claimants’ counsel appeared at the expungement hearing.

**CASE INFORMATION**

Statement of Claim filed on or about: March 13, 2020.

Claimants signed the Submission Agreement: March 13, 2020.

Statement of Answer filed on or about: May 19, 2020.

Respondent signed the Submission Agreement: May 18, 2020.

### **CASE SUMMARY**

In the Statement of Claim, Claimants asserted the following causes of action: violations of FINRA Rule 2111, violations of FINRA Rule 2110, common law negligence-unsuitable recommendations, negligence, negligent misrepresentations and omissions of material facts, and breach of fiduciary duty. The causes of action related to allegations that Respondent failed to conduct adequate due diligence before recommending that Claimants invest in a Ponzi-like scheme perpetrated by United Development Funding IV (UDF).

Unless specifically admitted in the Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimants requested compensatory damages including all out-of-pocket losses plus a market-adjusted damage component; punitive damages; pre-judgment interest from the date of investment and post judgment interest to the date the award is paid at the highest legal rate; all costs of suit, including reasonable attorney and consulting fees; and any other and further relief as the Panel, sitting in equity, may deem just and proper.

In the Statement of Answer, Respondent requested that the Panel dismiss Claimants' claims with prejudice; enter an award in favor of Respondent; award Respondent its costs and expenses in defending this action, including reasonable attorneys' fees; and such other relief as the Panel deems appropriate.

Respondent filed a request for expungement, on behalf of Unnamed Party James Warren ("Warren"), of all references to this matter from Central Registration Depository ("CRD") registration records. Please see the Other Issues Considered and Decided section of this Award for more information.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

On March 30, 2021, Respondent filed a Motion for Expungement on behalf of Unnamed Party Warren, to which no response was filed.

On April 8, 2021, Claimants filed a notice of voluntary dismissal with prejudice. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim.

The Panel conducted a recorded, telephonic on October 22, 2021, so the parties could present oral argument and evidence on Warren's request for expungement.

Neither Claimants nor Claimants' counsel participated in the expungement hearing.

The Panel reviewed Warren's BrokerCheck® Report. The Panel noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrence in the CRD.

The Panel also reviewed the settlement documentation, considered the amount of payment made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Panel noted that the settlement was not conditioned on any party to the settlement not opposing the request for expungement and that Warren contributed to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: Statement of Claim; Statement of Answer; Motion for Expungement and brief in support thereof; Respondent's exhibits, including but not limited to the settlement agreement; Warren's testimony, and BrokerCheck® Report.

The Award in this matter may be executed in counterpart copies.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and any post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2069860) from registration records maintained by the CRD for Unnamed Party James Edward Warren, Jr. (CRD Number 1067639) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party James Edward Warren, Jr. must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 12805 of the Code of Arbitration Procedure ("Code"), the Panel has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is factually impossible or clearly erroneous.

The Panel has made the above Rule 2080 finding based on the following reasons:

There was no evidence presented that at the time of the investment in question there was any misrepresentation or information omitted. There was no evidence presented that the investment was unsuitable. Events that later transpired did not render the sale a violation of any laws. Accordingly, we find that Claimant's allegations are clearly erroneous.

2. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, treble damages, and attorneys' fees, are denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

**Filing Fees**

FINRA Dispute Resolution Services assessed a filing fee\* for each claim:

Initial Claim Filing Fee = \$ 1,575.00

*\*The filing fee is made up of a non-refundable and a refundable portion.*

**Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge = \$ 1,900.00  
Member Process Fee = \$ 3,750.00

**Postponement Fees**

Postponements granted during these proceedings for which fees were assessed or waived:

July 19, 2021, postponement requested by Respondent = \$ 1,125.00

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Total Postponement Fees = \$ 1,125.00

The Panel has assessed the total postponement fees to Respondent.

**Last-Minute Cancellation Fees**

Fees apply when a hearing on the merits is cancelled within ten calendar days before the start of a scheduled hearing session:

July 19, 2021, cancellation requested by Respondent = \$ 1,800.00

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Total Last-Minute Cancellation Fees = \$ 1,800.00

The Panel has assessed the total last-minute cancellation fees to Respondent.

**Hearing Session Fees and Assessments**

The Panel has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the Arbitrator(s), including a pre-hearing conference with the Arbitrator(s), which lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session with a single Arbitrator @ \$450.00/session = \$ 450.00  
Pre-Hearing Conference: February 12, 2021 1 session

One (1) pre-hearing session with the Panel @ \$1,125.00/session = \$ 1,125.00  
Pre-Hearing Conference: July 8, 2020 1 session

One (1) hearing session on expungement request @ \$1,125.00/session = \$ 1,125.00  
Hearing: October 22, 2021 1 session

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Total Hearing Session Fees = \$ 2,700.00

The Panel has assessed \$1,012.50 of the hearing session fees to Claimants, jointly and severally.

The Panel has assessed \$1,687.50 of the hearing session fees to Respondent.

All balances are payable to FINRA Dispute Resolution Services and are due upon receipt.

**ARBITRATION PANEL**

Karen Roberts Washington	-	Public Arbitrator, Presiding Chairperson
James C. Morrow	-	Public Arbitrator
David W. White	-	Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument, which is my award.

**Concurring Arbitrators' Signatures**

***Karen Roberts Washington***

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Karen Roberts Washington  
Public Arbitrator, Presiding Chairperson

**10/29/2021**

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Signature Date

***James C. Morrow***

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James C. Morrow  
Public Arbitrator

**10/29/2021**

\_\_\_\_\_  
Signature Date

***David W White***

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David W. White  
Public Arbitrator

**10/29/2021**

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October 29, 2021

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Date of Service (For FINRA Dispute Resolution Services use only)