

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:  
Producers Protective Association, (Claimants) vs. U.S. Bancorp Investments,  
Inc. and Jennifer Gunn, (Respondents).

Case Number:  
00-00405

Hearing Site:  
Denver, Colorado

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**REPRESENTATION OF PARTIES**

Claimant, Producers Protective Association ("Producers"), hereinafter referred to as "Claimant": Neal S. Cohen, Esq., Chrisman, Bynum & Johnson, P.C., Boulder, Colorado.

Respondents, U.S. Bancorp Investments, Inc. ("Bancorp") and Jennifer Gunn ("Gunn"), hereinafter collectively referred to as "Respondents": Brian S. Hellberg, Esq., U.S. Bancorp Investments, Inc., Minneapolis, Minnesota.

**CASE INFORMATION**

Statement of Claim filed on or about: February 1, 2000.

Claimant, (Producers), signed the Uniform Submission Agreement: January 27, 2000.

Statement of Answer filed by Respondents, (Bancorp and Gunn), on or about: March 29, 2000.

Respondent, (Bancorp), signed the Uniform Submission Agreement: March 14, 2000.

Respondent, (Gunn), signed the Uniform Submission Agreement: February 24, 2000.

**CASE SUMMARY**

Claimant asserted the following causes of action:

1. Violation of §10(b) and Rule 10b-5.
2. Violation of Minn. Stat. §80A.23(2) (1999).
3. Fraud, including Nondisclosure.
4. Negligent Misrepresentation.
5. Negligent Supervision.
6. Breach of Contract.

Unless specifically admitted in its Answer, Respondents (Bancorp and Gunn) denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Statement of Claim fails to state a claim upon which relief can be granted.
2. Claimant is barred from recovery by the equitable doctrines of waiver, estoppel, and laches.
3. Claimant is barred from relief because of their contributory responsibility and breach of their fiduciary duties with respect to the account which they now assert had a different investment objective than disclosed and directed to Respondents.
4. Claimant is barred from relief because they directed, authorized, consented, and ratified the purchase of the securities made the subject of this claim.
5. Claimant is barred from relief because of their contributory negligence in failing to read, open, and review account statements and confirmations of transactions.
6. Claimant is barred from relief due to the violations of their fiduciary responsibilities. Said violations act as an intervening and superseding cause of any loss or damage.
7. Claimant is barred from relief because they knowingly assumed the risk that the securities at issue in this proceeding may decline in value and that the possibility that the securities may decline in value is inherent in the risk of purchasing any and all securities.
8. Claimant is barred from relief because their losses resulted from their own failure to place sale orders or otherwise mitigate their damages.
9. Claimant is barred from relief because their equity does not permit this Arbitration Panel to do for Claimant what they had previously and intentionally done on their own behalf (purchase higher yield securities with longer maturity dates) and for which they have previously chosen not to do for themselves (sell securities) or otherwise mitigate their damages in the event they believed the market fluctuation was too great.

#### RELIEF REQUESTED

Claimant requested:

Compensatory Damages	\$88,875
Punitive Damages	Unspecified
Interest	Prejudgment
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary/Non-Monetary Relief if any:	Any other relief that the Panel deems appropriate.

Respondents (Bancorp and Gunn) requested:

Compensatory Damages	\$0
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Punitive Damages	\$0
Interest	\$0
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary/Non-Monetary Relief if any:	Expungement of this matter from the CRD records of Ms. Jennifer Gunn.

### **OTHER ISSUES CONSIDERED AND 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.

### **AWARD**

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

1. That each and every request for relief is hereby dismissed and denied in its entirety;
2. That any and all relief not specifically addressed herein, including punitive damages, is hereby denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$225
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#### **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. In this matter, the member firm is Respondent Bancorp, Respondent Gunn's firm.

Member surcharge	= \$1,000
Pre-hearing process fee	= \$ 600
Hearing process fee	= \$1,500

**Forum Fees and Assessments**

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

One (1) Pre-hearing session with Panel x \$750 = \$ 750  
Pre-hearing conference(s): August 1, 2000 1 session

Two (2) Hearing sessions x \$750 = \$1,500  
Hearing Date: October 16, 2000 2 sessions  
Total Forum Fees = \$2,250

1. The Arbitration Panel has assessed \$1,125 of the forum fees to Claimant (Producers).
2. The Arbitration Panel has assessed \$1,125 of the forum fees jointly and severally to Respondents (Bancorp and Gunn).

**Fee Summary**

1. Claimant, (Producers), be and hereby is solely liable for:

Initial Filing Fee	= \$ 225
<u>Forum Fees</u>	= \$1,125
Total Fees	= \$1,350
<u>Less payments</u>	= \$1,425
Balance Due from NASD Dispute Resolution, Inc.	= \$ 75
2. Respondent, (Bancorp), be and hereby is solely liable for:

<u>Member Fees</u>	= \$3,100
Total Fees	= \$3,100
<u>Less payments</u>	= \$2,100
Balance Due NASD Dispute Resolution, Inc.	= \$1,000
- 3. Respondents, (Bancorp and Gunn), be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$1,125
Total Fees	= 0
<u>Less Payments</u>	= 0
Balance Due NASD Dispute Resolution, Inc.	= \$1,125

All balances are due to NASD Dispute Resolution, Inc.

**Concurring Arbitrators' Signatures**

/s/ Samuel R. Wing

November 3, 2000

\_\_\_\_\_  
Samuel E. Wing, Esq.  
Public Arbitrator, Presiding Chair

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

/s/ John T. Christensen

November 2, 2000

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John T. (Jack) Christensen  
Public Arbitrator

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

/s/ Dom Alecci

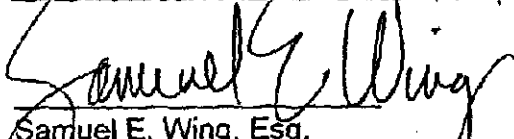
November 10, 2000

\_\_\_\_\_  
Dom Alecci  
Public Arbitrator

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

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution, Inc. office use only)

Concurring Arbitrators' Signature(s)

  
Samuel E. Wing, Esq.  
Public Arbitrator, Presiding Chair

Nov 3, 2000  
Signature Date

\_\_\_\_\_  
John T. (Jack) Christensen  
Public Arbitrator

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

\_\_\_\_\_  
Dom Alecci  
Public Arbitrator

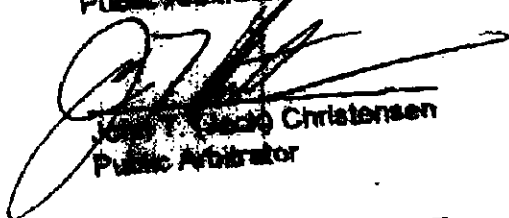
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NASD Dispute Resolution, Inc.  
Arbitration No. 00-00405  
Page 1 of 2

Consensus Arbitrators' Signature(s)

Samuel E. Wang, Esq.  
Public Arbitrator, Presiding Chair

  
Samuel E. Wang, Esq.  
Public Arbitrator

Dan Alford  
Public Arbitrator

Signature Date

11-2-2000  
Signature Date

Signature Date

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NASD Dispute Resolution, Inc.  
Arbitration No. 00-00405  
Page 5 of 5

Concurring Arbitrators' Signature(s)

\_\_\_\_\_  
Samuel E. Wing, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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John T. (Jack) Christensen  
Public Arbitrator

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

  
\_\_\_\_\_  
John Alecci  
Public Arbitrator

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

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