

**COPY**

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Diane Truly, individually and as Assignee of the Receiver for Pacific Cortez Securities Incorporated f/k/a La Jolla Capital Corporation, Claimant v. Salomon Grey Financial Corporation, Harold B. Gallison, Jr., Harold B. Gallison, Sr., Troy J. Flowers, Kyle B. Rowe, Angelo P. Koupas, Cris D. Sagnelli, Christos V. Kiziroglou, Gregory K. Mehlmann, Frank Drechsler, Randall Lanham, Sharilyn Gallison, Robert C. Weaver, Donald D. Huss, Janet Gallison, Denise Gallison, Claudia Gallison Winchester, individually and as Trustee of the Winchester Family Trust, and David K. Winchester individually and as Trustee of the Winchester Family Trust, Respondents

Case Number: 01-06157

Hearing Site: San Diego, California

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Nature of the Dispute: Customer v. Member, Associated Persons, and Others

**REPRESENTATION OF PARTIES**

For Claimant:

Jay R. Stein, Esq.  
Law Offices of Jay R. Stein  
Los Angeles, California

For Respondent Harold B. Gallison, Jr.:

Harold B. Gallison, Jr.  
In Propria Persona  
La Jolla, California

For Respondent Harold B. Gallison, Sr.:

Michael T. McColloch, Esq.  
McColloch & Campitiello, LLP  
Carlsbad, California

For Respondent David K. Winchester:

Jeffrey S. Kob, Esq.  
Jeffrey S. Kob, PC  
Coronado, California

**CASE INFORMATION**

Statement of Claim filed: November 14, 2001

Amended Statement of Claim filed: December 9, 2002

Claimant's Uniform Submission Agreement signed: November 12, 2001

Joint Statement of Answer filed by Respondents Salomon Grey Financial Corporation, Kyle B. Rowe, and Angelo P. Koupas: January 17, 2002

Respondent Salomon Grey Financial Corporation's Uniform Submission Agreement signed: January 7, 2002

Respondent Kyle B. Rowe's Uniform Submission Agreement signed:  
December 10, 2001

Respondent Angelo P. Koupas' Uniform Submission Agreement signed:  
January 7, 2002

Statement of Answer filed by Respondent Troy J. Flowers: February 6, 2002

Motion to Dismiss filed by Respondent Robert C. Weaver: January 24, 2003

Amended Motion to Dismiss filed by Respondent Robert C. Weaver: August 1, 2004

Statement of Answer filed by Respondent Harold B. Gallison, Jr.: August 18, 2005

Respondent Harold B. Gallison, Jr.'s Uniform Submission Agreement signed:  
January 7, 2002

### **CASE SUMMARY**

Claimant's Initial Statement of Claim named the following Respondents: Salomon Grey Financial Corporation, Harold B. Gallison, Jr., Troy J. Flowers, Kyle B. Rowe, Angelo P. Koupas, Cris D. Sagnelli, Harold B. Gallison, Sr., Christos V. Kiziroglou, Gregory K. Mehlmann, Sharilyn Gallison, Frank Drechsler, and Randall Lanham.

On December 9, 2002, Claimant filed an Amended Statement of Claim pursuant to the NASD Code of Arbitration Procedure ("Code") Rule 10328(a), naming the following additional Respondents: Robert C. Weaver, Jr., Janet Gallison, Donald D. Huss, Denise Gallison, and Claudia Gallison Winchester and David K. Winchester, husband and wife, individually and as Trustees of the Winchester Family Trust.

Claimant Diane Truly individually alleged breach of fiduciary duty, unsuitability, fraud, misrepresentation and omission of facts, violation of NASD rules, and failure to supervise. Ms. Truly's allegations concerned the purchase the following stocks for her individual account: Tekgraf, Caledonia Mining, Microtel International, Greenland Corp.,

Carv.com, Compost America, Queensands, Juina Mining, Trimfast, China Food & Beverage, Infoseek, E.Medsoft, Finantra, and Amern Group. According to Ms. Truly's allegations, ten out of the fourteen recommended purchases were penny stocks.

As assignee of the Receiver for Pacific Cortez Securities Incorporated, Claimant Truly brought this action "to marshal and distribute funds for the benefit of Pacific Cortez investors defrauded by the actions" of Respondents. In addition to the allegations of breach of fiduciary duty, fraud, misrepresentation and omission of facts, violation of NASD rules, and failure to supervise, the Receiver's assignee alleged conspiracy and liability based on the theory of alter ego.

Respondents Salomon Grey Financial Corporation, Kyle B. Rowe, and Angelo P. Koupas denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

Respondent Troy J. Flowers denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

Respondent Harold B. Gallison, Jr. denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

### **RELIEF REQUESTED**

Claimant Diane Truly individually requested compensatory damages of \$157,606.00, rescission of investment in Pacific Trading Post.com in the amount of \$174,483.00, unspecified punitive damages, interest, and costs, including attorney's fees.

As Assignee of the Receiver for Pacific Cortez Securities Incorporated f/k/a La Jolla Capital Corporation, Claimant Diane Truly requested unspecified compensatory damages relating to the net realized losses on sales of Pacific Trading Post.com and related companies and funds directed or otherwise misappropriated by said Respondents, unspecified punitive damages, pre-judgment interest, and costs, including attorney's fees.

Respondents Salomon Grey Financial Corporation, Kyle B. Rowe, and Angelo P. Koupas requested dismissal of Claimant's Statement of Claim in its entirety, and costs, including attorney's fees.

Respondent Troy J. Flowers requested dismissal of Claimant's Statement of Claim in its entirety, and costs, including attorney's fees.

Respondent Harold B. Gallison, Jr. requested dismissal of Claimant's Statement of

Claim in its entirety, and costs, including attorney's fees.

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

Respondents Harold Troy J. Flowers, Kyle B. Rowe, Angelo P. Koupas, Cris D. Sagnelli, Harold B. Gallison, Sr., Christos V. Kiziroglou, Gregory K. Mehlmann, Robert C. Weaver, Jr., David K. Winchester, and Donald D. Huss did not file with NASD Dispute Resolution properly executed submission agreements but are required to submit to arbitration pursuant to the Code and are bound by the determination of the Panel on all issues submitted.

On May 22, 2002, Claimant moved the Panel to change the hearing location for this case from San Francisco, California to San Diego, California. No opposition to the request was filed by any of the Respondents. During a pre-hearing conference on June 6, 2002, the Panel granted Claimant's request to change the hearing location from San Francisco to San Diego, California.

On July 23, 2003, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators. Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

On November 20, 2003, Claimant dismissed Respondent Troy J. Flowers with prejudice.

On September 7, 2004, Claimant filed a Motion Requesting the Panel to Exercise Jurisdiction over Respondents Denise Gallison, David K. Winchester, and David and Claudia Winchester, Trustees of the Winchester Family Trust. On October 27, 2004, David and Claudia Winchester filed an Opposition to the Motion, individually as well as in their respective capacities as trustees of the Winchester Family Trust. On March 3, 2004, Claimant filed a Reply to the Winchesters' Opposition. A pre-hearing conference was held on November 22, 2004, attended by Jay R. Stein, Esq., representing Claimant, Belinda Goss, Esq., representing Salomon Grey Financial Corporation and Kyle B. Rowe, Irving M. Einhorn, Esq., representing Claudia Gallison Winchester and David K. Winchester, individually and as Trustees of the Winchester Family Trust, and Donald D. Huss, in propria persona. After due consideration, the Panel held that it had jurisdiction over David K. Winchester, but declined to exercise jurisdiction over Claudia Gallison Winchester and Denise Gallison.

On September 14, 2004, Claimant dismissed Respondent Robert C. Weaver without prejudice.

On August 15, 2005, Claimant dismissed Respondents Kyle B. Rowe and Angelo P. Koupas with prejudice.

On September 20, 2005, Claimant notified NASD Dispute Resolution that she had reached a settlement with Salomon Grey Financial Corporation and that it "is no longer a party to this arbitration proceeding."

On April 26, 2006, Respondent Harold B. Gallison, Sr. filed a Motion to Dismiss or alternatively to Postpone the Hearing. On May 1, 2006, the first day of the hearing, the parties then presented oral argument on Mr. Gallison's Motion. After due deliberation, the Panel denied the Motion to Dismiss but granted Respondent Gallison's request for a postponement of the hearing, whereupon Claimant dismissed Respondent Harold B. Gallison, Sr. with prejudice.

The Panel dismissed without prejudice Respondents Sharilyn Gallison, Janet Gallison, Denise Gallison, Frank Drechsler, Randall Lanham, and Claudia Gallison Winchester in her individual capacity and as Trustee of the Winchester Family Trust, upon a finding that they were not required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure ("Code").

The Panel dismissed without prejudice Respondents Cris D. Sagnelli, Christos V. Kizioglou, and Gregory K. Mehlmann upon a finding that they were not properly served with the Statement of Claim and did not receive due notice of the hearing on this matter.

**AWARD**

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

- 1) Respondent Harold B. Gallison, Jr. is liable to and shall pay Claimant Diane Truly, an individual, the sum of \$170,240.00 in compensatory damages.
- 2) Respondent Harold B. Gallison, Jr. is liable to and shall pay Claimant Diane Truly, as Assignee of the Receiver for Pacific Cortez Securities Incorporated f/k/a La Jolla Capital Corporation, the sum of \$3,317,000.00 in compensatory damages.
- 3) Claimant Diane Truly's claims against David K. Winchester, brought both in her individual capacity and as Assignee of the Receiver for Pacific Cortez Securities Incorporated f/k/a La Jolla Capital Corporation, are denied and David K. Winchester, both in his individual capacity and as Trustee of the Winchester Family Trust, is dismissed with prejudice.
- 4) The parties shall bear their respective costs, including attorney's fees.
- 5) All other relief requested and not expressly granted, is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee = \$ 300.00

#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Salomon Grey Financial Corporation is a party and the following fees are assessed:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 600.00
Hearing Process Fee	= \$ 2,500.00
<b>Total Member Fees</b>	<b>= \$ 4,600.00</b>

#### **Adjournment Fees**

The following adjournment fees are assessed:

May 9-13, 2005 and May 16-17, 2005  
adjournment requested by Respondents  
Harold J. Gallison, Jr., David K. Winchester,  
Salomon Grey Financial Corporation, and  
Kyle B. Rowe = \$ 1,125.00

The Panel assessed the Adjournment Fee jointly and severally to Respondents  
Harold J. Gallison, Jr., David K. Winchester, Salomon Grey Financial  
Corporation, and Kyle B. Rowe.

#### **Forum Fees and Assessments**

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

One (1) Pre-hearing conference session  
with a single arbitrator @ \$450.00/session  
Pre-hearing conference: April 20, 2006 = \$ 450.00

Twelve (12) Pre-hearing conference sessions  
with the Panel @ \$1,125.00/session = \$13,500.00

Pre-hearing conferences:	June 6, 2002	1 session
	July 26, 2004	1 session
	October 4, 2004	1 session
	November 22, 2004	1 session
	April 18, 2005	1 session
	July 27, 2005	1 session
	September 6, 2005	1 session
	October 3, 2005	1 session
	November 1, 2005	1 session
	January 9, 2006	1 session
	May 31, 2006	1 session
	September 8, 2006	1 session

Forty (40) Hearing sessions @ \$1,125.00/session = \$45,000.00

Hearings:	May 1, 2006	2 sessions
	May 2, 2006	2 sessions
	May 3, 2006	2 sessions
	May 4, 2006	2 sessions
	May 5, 2006	2 sessions
	June 26, 2006	2 sessions
	June 27, 2006	2 sessions
	July 31, 2006	2 sessions
	August 1, 2006	2 sessions
	August 28, 2006	2 sessions
	August 29, 2006	1 session
	August 30, 2006	2 sessions
	August 31, 2006	2 sessions
	September 1, 2006	2 sessions
	September 12, 2006	2 sessions
	September 13, 2006	2 sessions
	September 14, 2006	2 sessions
	October 10, 2006	2 sessions
	October 11, 2006	2 sessions
	October 12, 2006	3 sessions

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**Total Forum Fees = \$58,950.00**

The Panel waived the forum fee assessed on September 6, 2005.

The Panel assessed the entire remaining balance of the forum fees, in the amount of \$57,825.00, Harold B. Gallison, Jr.



**Fee Summary**

1. Claimant Diane Truly is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Less payments	= \$ (1,800.00)
<b>Refund Due from NASD Dispute Resolution</b>	<b>= \$ (1,500.00)</b>
  
2. Respondent Salomon Grey Financial Corporation is charged with the following fees and costs:

Member Fees	= \$ 4,600.00
Less payments	= \$ (6,975.00)
<b>Refund Due from NASD Dispute Resolution</b>	<b>= \$ (2,375.00)</b>
  
3. Respondents Harold J. Gallison, Jr., David K. Winchester, Salomon Grey Financial Corporation, and Kyle B. Rowe are charged jointly and severally with the following fees and costs:

Adjournment Fee	= \$ 1,125.00
Less payment by Salomon Grey Financial Corporation	= \$ (1,125.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>
  
4. Respondent Harold J. Gallison, Jr. is charged with the following fees and costs:

Forum Fees	= \$57,825.00
Less payments	= \$ (0.00)
<b>Refund Due from NASD Dispute Resolution</b>	<b>= \$57,825.00</b>

All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Joel C. Estes, Esq.	-	Public Arbitrator, Presiding Chair
Robert John Wagener	-	Public Arbitrator
Larry Haugaard	-	Non-Public Arbitrator

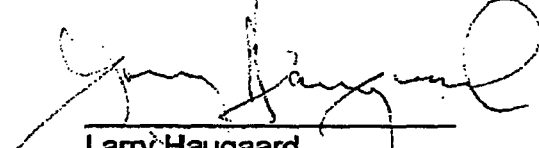
**Concurring Arbitrators' Signatures**

  
Joel C. Estes, Esq.  
Chair, Public Arbitrator

11/28/06  
Signature Date

  
Robert John Wagener  
Public Arbitrator

11/28/06  
Signature Date

  
Larry Haugaard  
Non-Public Arbitrator

11-28-06  
Signature Date

11/28/06  
Date of Service