

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Anna Cialino and The Anna Cialino Trust (Claimants) v. Wall Street Financial Group, Inc. and Bruce Whitman (Respondents)

Case Number: 02-05346

Hearing Site: New York, New York

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Nature of the Dispute: Customers vs. Member and Associated Person.

**REPRESENTATION OF PARTIES**

Claimants, Anna Cialino and The Anna Cialino Trust ("the Trust") hereinafter referred to as "Claimants": Richard D. DeVita, Esq., DeVita & Associates, Hoboken, NJ.

Respondent Wall Street Financial Group, Inc. ("WSFG"): Michael S. Schwartzberg, Esq., Winget, Spadafora & Schwartzberg, LLP, New York, NY.

Respondent Bruce Whitman ("Whitman") appeared *pro se*.

**CASE INFORMATION**

Statement of Claim filed on or about: September 6, 2002.

Anna Cialino signed the Uniform Submission Agreement: September 6, 2002.

Alan Cialino signed the Uniform Submission Agreement as Trustee of The Anna Cialino Trust: September 6, 2002.

Statement of Answer filed by Respondent WSFG on or about: December 23, 2002.

WSFG signed the Uniform Submission Agreement: September 25, 2003.

Statement of Answer filed by Respondent Whitman on or about: December 28, 2002.

Whitman did not sign the Uniform Submission Agreement.

**CASE SUMMARY**

Claimants asserted the following causes of action: negligence; breach of contract; breach of fiduciary duty; unsuitability; control liability; respondeat superior; and failure to supervise. Claimants' claims involved annuities.

Unless specifically admitted in its Answer, Respondent WSFG denied the allegations made in the Statement of Claim.

### **RELIEF REQUESTED**

Claimants requested actual compensatory damages in the amount of \$861,137.38; commission/concession charges on all sales and purchases; return of all fees given relating to the creation of the will and trust; costs, fees, and interest, including attorneys' fees (pursuant to Code of Arbitration Rule 10215); punitive damages of three times the compensatory, or \$2,583,412.14; and any other remedy which the Panel deems appropriate.

Respondent WSFG requested that it be dismissed from this proceeding; costs and expenses incurred; and that all forum fees be imposed in their entirety upon the Claimants.

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

Respondent Whitman did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and, having answered the claim, and appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

Respondent Whitman did not appear at the hearings on April 1, 2004 and April 2, 2004 although he was properly served notice of the hearing dates.

Claimants requested to amend the claim. The Panel denied the request.

Respondent WSFG made a motion for summary judgment. The Panel denied the motion.

Respondent WSFG made a motion to dismiss after the conclusion of Claimants' case. The Panel denied the motion.

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

1. Respondents WSFG and Whitman are jointly and severally liable and shall pay to Claimants compensatory damages in the amount of \$328,000.00.
2. Respondents are jointly and severally liable for and shall pay to Claimants the sum of

\$600.00, to reimburse Claimants for the filing fee previously paid to NASD Dispute Resolution.

3. Any and all relief not specifically addressed herein, including punitive damages, is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$600.00
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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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Wall Street Financial Group, Inc. is a party.

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,000.00

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

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

Two (2) Pre-hearing sessions with Panel @ \$1,200.00	= \$ 2,400.00
Pre-hearing conferences:	
June 26, 2003	1 session
October 20, 2003	1 session
Ten (10) Hearing sessions @ \$1,200.00	= \$12,000.00
Hearing Dates:	
December 16, 2003	2 sessions
December 17, 2003	2 sessions
December 18, 2003	2 sessions
April 1, 2004	2 sessions
April 2, 2004	2 sessions
Total Forum Fees	= \$14,400.00

1. The Panel has assessed \$14,400.00 of the forum fees jointly and severally against Respondents.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

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| 1. Claimants requested duplication of cassette tapes       | = \$225.00 |
| 2. Respondent WSFG requested duplication of cassette tapes | = \$120.00 |

**Fee Summary**

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|--|---------------|
| 1. Claimants are jointly and severally liable for: |               |
| Initial Filing Fee                                 | = \$ 600.00   |
| <u>Administrative Costs</u>                        | = \$ 225.00   |
| Total Fees   | = \$ 825.00   |
| <u>Less payments</u>                               | = \$ 2,025.00 |
| Refund Due to Claimants                            | = \$ 1,200.00 |

*As stated in the "Award" section above, Respondents are jointly and severally liable and shall reimburse Claimants for the \$600.00 filing fee.*

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|--|---------------|
| 2. WSFG is solely liable for:                        |               |
| Member Fees  | = \$ 8,550.00 |
| <u>Administrative Costs</u>                          | = \$ 120.00   |
| Total Fees   | = \$ 8,670.00 |
| <u>Less payments</u>                                 | = \$ 8,550.00 |
| Balance Due NASD Dispute Resolution                  | = \$ 120.00   |
| 3. Respondents are jointly and severally liable for: |               |
| Forum Fees   | = \$14,400.00 |
| Total Fees   | = \$14,400.00 |
| <u>Less payments</u>                                 | = \$ 0.00     |
| Balance Due NASD Dispute Resolution                  | = \$14,400.00 |

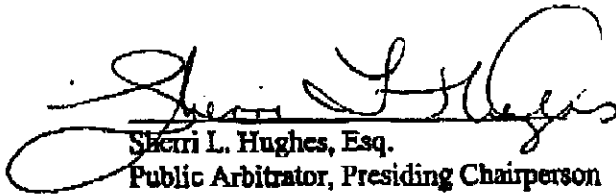
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.
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**ARBITRATION PANEL**

Sherri L. Hughes, Esq.	-	Public Arbitrator, Presiding Chair
Alvin Green, Esq.	-	Public Arbitrator
Harry D. Frisch, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

  
Sherri L. Hughes, Esq.  
Public Arbitrator, Presiding Chairperson

April 17, 2004  
Signature Date

\_\_\_\_\_  
Alvin Green, Esq.  
Public Arbitrator

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

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Harry D. Frisch, Esq.  
Non-Public Arbitrator

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

April 20, 2004  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

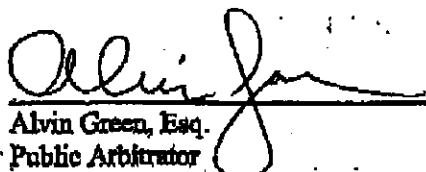
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Sherri L. Hughes, Esq.  
Public Arbitrator, Presiding Chairperson

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Signature Date

  
Alvin Green, Esq.  
Public Arbitrator

4/19/2004  
Signature Date

\_\_\_\_\_  
Harry D. Frisch, Esq.  
Non-Public Arbitrator

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

April 20, 2004

Date of Service (For NASD Dispute Resolution use only)

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Non-Public Arbitrator

4/19/2004  
Signature Date

April 20, 2004

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