

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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Isadore April

Case Number: 02-06483

Name of the Respondents  
Walnut Street Securities, Inc. and  
Marc A. Weisman

Hearing Site: St. Louis, Missouri

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**NATURE OF DISPUTE**

Customer vs. Member Firm and Associated Person

**REPRESENTATION OF PARTIES**

Stuart R. Berkowitz, Esq. of the law firm Platke and Berkowitz, LLP located in St. Louis, Missouri represented Claimant, Isadore April, hereinafter referred to as "Claimant."

Jeffrey S. Jamieson, Esq. of the law firm Blackwell Sanders Peper Martin, LLP located in St. Louis, Missouri represented Respondent, Walnut Street Securities, Inc., hereinafter referred to as "Respondent Walnut."

J. Christopher Wehrle, Esq. of the law firm Goldberg Katz, LLC located in St. Louis, Missouri represented Respondent, Marc A. Weisman, hereinafter referred to as "Respondent Weisman."

**CASE INFORMATION**

Statement of Claim filed on or about October 29, 2002.

Claimant, Isadore April, signed the Uniform Submission Agreement on or about October 24, 2002.

Statement of Answer filed by Respondent, Walnut Street Securities, Inc., on February 7, 2003.  
Respondent, Walnut Street Securities, Inc., signed the Uniform Submission Agreement on June 20, 2003.

Statement of Answer filed by Respondent, Marc A. Weisman, on January 10, 2003.

Respondent, Marc A. Weisman, signed the Uniform Submission Agreement on January 9, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: suitability, negligence, omission of facts, misrepresentations, breach of fiduciary duty and failure to supervise. The causes of action relate to the order execution of a variable annuity with American Life Insurance Company.

Unless specifically admitted in its Answer, Respondent, Walnut Street Securities, Inc. denied the allegations made in the Statement of Claim and asserted the following defenses:

1. The allegations in the Statement of Claim fail to state a claim upon which relief can be granted.
2. Claimant's damages, if any, were caused by the acts or omissions of third parties over which Respondent had no control.
3. Claimant's claims are barred by the doctrines of waiver, estoppel, acquiescence, ratification and laches in that Claimant knew or should have known or otherwise had access to information regarding his investments and the status of his account. Further, Claimant's failure to object to the purchase of or the transactions made within the Annuity within a reasonable a time bars recovery in this action.
4. Claimant has failed and continues to fail to take steps reasonably necessary to mitigate his damages, if any.
5. Any damage or injury allegedly sustained by Claimant, or the consequences of a known risk and were voluntarily and knowingly undertaken by Claimant and thus, Claimant is barred from recovery thereof. Moreover, Claimant's alleged injuries, if any, are attributable to market forces over which Respondent had no control, if any, caused Claimant's damages.
6. Claimant directed and authorized the execution of all transactions in his account, and therefore, is estopped from bringing this action.
7. The purported wrongdoing of Respondent was not the proximate cause of any losses for which Claimant seeks recovery.
8. Claimant's claims for violation of the rules of securities industries Self-Regulatory Organization are barred, as there is no private right of action for any such violation.
9. Claimant's claims are barred by reason of second investment decisions made by Claimants with respect to various investments.
10. Walnut Street did not know and in the exercise of reasonable care could not have known of the existence of the facts upon which the Claimant bases his claims of liability and, therefore Claimant's claims are barred.

Unless specifically admitted in its Answer, Respondent, Marc A. Weisman, denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Claimant is an educated and well-informed investor who has direct experience in the insurance industry as an insurance agent.
2. Claimant had an opportunity to review all investments, all product information and had the ability and knowledge to ask questions and assess his level of risk in relation to each investment.
3. Respondent terminated his association with Walnut Street Securities and Polaris Financial Strategies in February of 2001 and had no direct or indirect contact with Claimant after this date. All correspondence and contact with Claimant went through Polaris Financial Strategies.
4. Claimant was negligent in surrendering his annuity and did so even after being advised not to do so and being advised of the surrender charges by Michael Weisman, President of Polaris Financial Strategies by letter dated April 26, 2002.

5. Upon information and belief, Claimant was given ways to withdraw cash from the investment without incurring a loss; however, Claimant failed to accept these recommendations.

#### **RELIEF REQUESTED**

Claimant requested:

Compensatory Damages	\$38,882.50
Punitive Damages	unspecified
Interest	unspecified
Attorneys' Fees	unspecified
Other Costs	unspecified

Respondent, Walnut Street Securities, Inc. requested that Claimant's claims be dismissed, that Claimant's requested relief be denied, that the Panel award Respondent Walnut Street Securities, Inc. its costs, and for such other and further relief as the Panel deems just and proper.

Respondent, Marc A. Weisman, requested that Claimant's claims be dismissed.

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

The parties 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 Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Any and all claims asserted by Claimant, Isadore April, are denied.
2. Parties shall bear their own costs, including attorneys' fees, except as specified herein.
3. The Arbitrator recommends the expungement of all reference to the above captioned arbitration from Respondent Marc A. Weisman's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-90 and 99-54, Respondent, Marc A. Weisman, must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
4. 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 = \$ 175.00

#### **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 event giving rise to the dispute. Accordingly, Walnut Street Securities, Inc. is a party and is therefore assessed the following fees:

Member surcharge = \$ 875.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$1,000.00  
Total fees = \$2,625.00

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

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

One (1) Pre-hearing session with a single arbitrator @ \$450.00 = \$ 450.00  
Pre-hearing conference: June 20, 2003 1 session

Two (2) Hearing sessions @ \$ 450.00 = \$ 900.00  
Hearing Date: December 9, 2003 2 sessions  
Total Forum Fees = \$1,350.00

1. The Arbitrator has assessed 100% of the forum fees in the amount of \$1,350.00 to Claimant, Isadore April.

#### **Fee Summary**

1. Claimant, Isadore April, is solely liable for:

Initial Filing Fee = \$ 175.00  
Forum Fees = \$1,350.00  
Total Fees = \$1,525.00  
Less payments = \$ 625.00  
Balance Due NASD Dispute Resolution = \$ 900.00

2. Respondent, Walnut Street Securities, Inc., is solely liable for:

Member Fees = \$2,625.00  
Less payments = \$2,625.00  
Balance Due NASD Dispute Resolution = \$ 0.00

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

**ARBITRATION PANEL**

George T. Mehan, Jr.

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Public Arbitrator, Presiding Chairperson

**Concurring Arbitrators' Signature**

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George T. Mehan, Jr.  
Public Arbitrator, Presiding Chairperson

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1/8/04  
Signature Date

\_\_\_\_\_  
1/9/04  
Date of Service (For NASD Dispute Resolution office use only)

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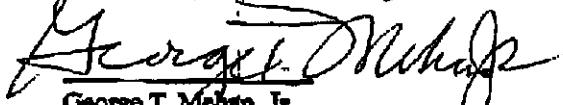
**ARBITRATION PANEL**

George T. Mahan, Jr.

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Public Arbitrator, Presiding Chairperson

Concurring Arbitrators' Signatures



George T. Mahan, Jr.  
Public Arbitrator, Presiding Chairperson

 8, 2004.

Signature Date