

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

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In the Matter of the Arbitration Between:

Elaine Bevan, (Claimant) v. Richard Wachowiak, Barbara Zsiros, Thomas Allers, Jerrold Kopsa, Carl Jordan and Chris Randall, (Respondents)

Case Number: 02-06523

Hearing Site: New York, New York

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Nature of the Dispute: Customer vs. Associated Persons

**REPRESENTATION OF PARTIES**

Claimant, Elaine Bevan ("Bevan"), hereinafter referred to as "Claimant": Andrea R. Polvino, Esq., McGrath & Polvino, in Williamsville, New York.

Respondents, Richard Wachowiak ("Wachowiak"), Barbara Zsiros ("Zsiros"), Thomas Allers ("Allers"), Jerrold Kopsa ("Kopsa"), Carl Jordan ("Jordan") and Chris Randall ("Randall"), hereinafter (collectively) referred to as "Respondents": Jerauld E. Brydges, Esq., Harter, Secrest & Emery LLP, Rochester, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: October 30, 2002

Claimant Bevan signed the Uniform Submission Agreement: October 21, 2002

Statement of Answer filed by Respondents on or about: January 27, 2003

Respondent Wachowiak signed the Uniform Submission Agreement: January 23, 2003

Respondent Zsiros signed the Uniform Submission Agreement: January 23, 2003

Respondent Allers signed the Uniform Submission Agreement: January 13, 2003

Respondent Kopsa signed the Uniform Submission Agreement: January 23, 2003

Respondent Jordan signed the Uniform Submission Agreement: January 25, 2003

Respondent Randall signed the Uniform Submission Agreement: February 11, 2003

**CASE SUMMARY**

Claimant asserted the following causes of action: unsuitability and failure to monitor. The causes of action relate to Claimant's purchase of certain mutual funds through M & T Securities, Inc.

Unless specifically admitted in their Answer, Respondents denied the allegations of wrongdoing set forth in the Statement of Claim and asserted the following defenses: Failure to state a claim

upon which relief may be granted, failure to mitigate damages, equitable and/or legal estoppel, and bar by the applicable statutes of limitation, among others.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$766,168.39; actual damages of \$48,000.00 resulting from unnecessary liquidation of an IRA account; punitive damages in the amount of \$100,000.00; and interest in the amount of \$81,500.00.

Respondents requested dismissal of the Statement of Claim in its entirety, plus costs and attorneys' fees.

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

Arbitrator Jeffrey Sellers declined to sign the Award. Therefore, the Award has been executed by the majority of the Panel.

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**

On or about April 15, 2004, the Parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of both Parties for entry of an Award, the written stipulation there, the Panel grants the motion and enters this award granting the following relief:

1. The Statement of Claim is dismissed in its entirety, with prejudice and on the merits, without any finding of fault or liability on the part of Respondents.
2. Each Party shall bear their respective costs, including attorneys' fees.
3. The Panel recommends the expungement of all reference to the above-captioned arbitration from the registration records of Respondents, Thomas Allers, Carl Jordan, Jerrold Kopsa, Chris Randall, Richard Wachowiak and Barbara Zsiros, maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondents must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
4. All other requests for relief, which are not addressed specifically in this Award, are denied with prejudice.

### **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	= \$ 375.00
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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(s) at the time of the events giving rise to the dispute. In this matter, the member firm M & T Securities, Inc. is the Respondents' firm.

Member Surcharge	= \$2,250.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$4,000.00</u>
Total Member Fees	= \$7,000.00

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

The Panel assesses forum fees for each hearing session conducted. A hearing 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. Forum fees associated with these proceedings are:

One (1) Pre-hearing conference session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: February 18, 2004 1 session	

One (1) Pre-hearing conference session with the Panel @ \$1,200.00	= \$1,200.00
Pre-hearing conference: June 18, 2003 1 session	

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Total Forum Fees	= \$1,650.00
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1. The Panel has assessed \$825.00 of the forum fees against Claimant.
2. The Panel has assessed \$825.00 of the forum fees jointly and severally against Respondents Allers, Jordan, Kopsa, Randall, Zsiros and Wachowiak.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$1,200.00
Total Fees	= \$1,575.00
Less payments	= \$1,575.00
Balance Due NASD Dispute Resolution	= \$ 0.00

*Pursuant to Rule 10332(f) of the Code of Arbitration Procedure, NASD is retaining the total initial amount of the hearing session deposited by Claimant, because this office was notified by the parties that they settled this matter within eight (8) days of the first scheduled hearing session.*

2. M & T Securities is solely liable for:

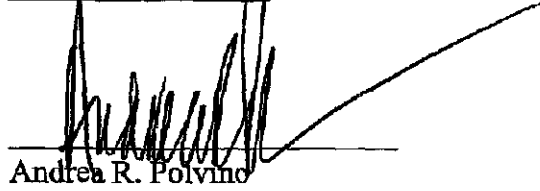
Member Fees	= \$7,000.00
Total Fees	= \$7,000.00
Less payments	= \$7,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Allers, Jordan, Kopsa, Randall, Zsiros and Wachowiak are jointly and severally liable for:

Forum Fee	= \$ 825.00
Total Fees	= \$ 825.00
Less payments	= \$ 825.00
Balance Due NASD Dispute Resolution	= \$ 0.00

All balances are due and payable to NASD Dispute Resolution.

**Parties' Signatures**



Andrea R. Polvino  
McGrath & Polvino, PLLC  
*Attorneys for Claimant*  
17 Beresford Court  
Williamsville, New York 14221  
Tel: 716.632.3600  
Fax: 716.632.2086

7/30/04  
\_\_\_\_\_  
Signature Date



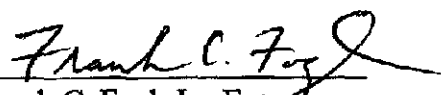
Jerauld E. Brydges  
Harter, Secrest & Emery LLP  
*Attorneys for Respondents*  
1600 Bausch & Lomb Place  
Rochester, New York 14604  
Tel: 585.232.6500  
Fax: 585.232.2152

7/16/04  
\_\_\_\_\_  
Signature Date

**ARBITRATION PANEL**

Frank C. Fogl, Jr., Esq.	-	Public Arbitrator, Presiding Chair
Jeffrey A. Sellers, Esq.	-	Public Arbitrator
Birgitta K. Siegel, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
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Frank C. Fogl, Jr., Esq.  
Public Arbitrator, Presiding Chair

8/20/04  
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Signature Date

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Jeffrey A. Sellers, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Birgitta K. Siegel, Esq.  
Non-Public Arbitrator

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

November 5, 2004.  
\_\_\_\_\_  
Date of Service (For NASD office use only)

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Frank C. Fogl, Jr., Esq.	-	Public Arbitrator, Presiding Chair
Jeffrey A. Sellers, Esq.	-	Public Arbitrator
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Frank C. Fogl, Jr., Esq.  
Public Arbitrator, Presiding Chair

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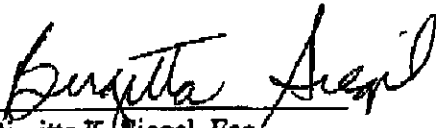
Signature Date

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Jeffrey A. Sellers, Esq.  
Public Arbitrator

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Non-Public Arbitrator

  
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