

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

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In the Matter of the Arbitration Between:

Adolf Miralles and Maria Miralles, Claimants v. Trusted Securities Advisors Corp. and David Abernethy, Respondents

Case Number: 02-07802

Hearing Site: Los Angeles, California

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

**REPRESENTATION OF PARTIES**

For Claimants:

Jonathan W. Evans, Esq.  
Jonathan W. Evans & Associates  
Studio City, California

For Respondents:

Todd E. Croutch, Esq.  
Fonda & Fraser, LLP  
Los Angeles, California

**CASE INFORMATION**

Statement of Claim filed: December 20, 2002

Claimants' Joint Uniform Submission Agreement filed: December 20, 2002

Joint Statement of Answer filed by Respondents: March 28, 2003

Respondent Trusted Securities Advisors Corp.'s Uniform Submission Agreement signed:  
March 27, 2003

Respondent David Abernethy's Uniform Submission Agreement signed: March 27, 2003

**CASE SUMMARY**

Claimants alleged negligence, unsuitability, failure to supervise, breach of fiduciary duty, breach of contract, breach of implied covenant of good faith and fair dealing, violation of federal and state securities laws, elder abuse, and unfair and deceptive practices against senior citizens, involving unspecified securities.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim.

### **RELIEF REQUESTED**

Claimants requested \$92,433.67 in compensatory damages, unspecified punitive damages, lost opportunity cost, interest at 10% per annum from the date the Claimants deposited their funds through the date this Award is paid, treble damages, and costs, including expert witness fees and attorney's fees.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety.

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

On January 13, 2003, Claimants and Claimants' 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.

Respondents' counsel signed a Waiver Agreement on their behalf expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

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, 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) Claimants' claims are denied in their entirety.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) 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
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#### **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 Trusted Securities Advisors Corp. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	= \$ 2,750.00
<b>Total Member Fees</b>	<b>= \$ 5,200.00</b>

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

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

1 Pre-hearing conference session with the Panel @ \$1,125.00/session	= \$ 1,125.00
Pre-hearing conference: July 28, 2003 1 session	
6 Hearing sessions @ \$1,125.00/session	= \$ 6,750.00
Hearings: March 15, 2004 2 sessions	
March 16, 2004 3 sessions	
March 17, 2004 1 session	

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<b>Total Forum Fees</b>	<b>= \$ 7,875.00</b>
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1. The Panel assessed \$ 3,937.50 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$ 1,968.75 of the forum fees to Respondent Trusted Securities Advisors Corp.
3. The Panel assessed \$ 1,968.75 of the forum fees to Respondent David Abernethy.

**Fee Summary**

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 3,937.50
Total Fees	= \$ 4,237.50
<u>Less payments</u>	= \$(1,425.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 2,812.50</b>

2. Respondent Trusted Securities Advisors Corp. is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 1,968.75
Total Fees	= \$ 7,168.75
Less payments	= \$( 5,200.00)
<u>Less Mediation Deposit</u>	= \$( 2,000.00)
<b>Refund Due</b>	<b>= \$( 31.25)</b>

3. Respondent David Abernethy is charged with the following fees and costs:

Forum Fees	= \$ 1,968.75
<u>Less payments</u>	= \$( 0.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 1,968.75</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**

Joseph Winter, Esq.	-	Public Arbitrator, Presiding Chair
Walter J. Huntley, III	-	Public Arbitrator
June J. Vinci	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Joseph Winter, Esq.  
Chair, Public Arbitrator

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Signature Date

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Walter J. Huntley, III  
Public Arbitrator

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Signature Date

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June J. Vinci  
Non-Public Arbitrator

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Signature Date


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Date of Service

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Chair, Public Arbitrator

  
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Signature Date

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Walter J. Huntley, III  
Public Arbitrator

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Signature Date

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Arbitration No. 02-07802  
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Joseph Winter, Esq.  
Chair, Public Arbitrator

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Signature Date

*Walter J. Huntley, III*  
Walter J. Huntley, III  
Public Arbitrator

*4-5-04*  
Signature Date

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June J. Vinci  
Non-Public Arbitrator

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Signature Date

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Date of Service

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