

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

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In the Matter of the Arbitration Between:

Eleanor W. Gearhart (Claimant) v. Chase Investment Services Corp. and Juanita (Jean) Forrestal (Respondents)

Case Number: 03-00645

Hearing Site: New York, New York

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

**REPRESENTATION OF PARTIES**

Claimant Eleanor W. Gearhart ("Gearhart") hereinafter referred to as "Claimant": Jenice L. Malecki, Esq., The Law Offices of Jenice L. Malecki, New York, NY.

Respondents Chase Investment Services Corp. ("CISC") and Juanita Forrestal ("Forrestal") hereinafter collectively referred to as "Respondents": Andrew W. Sidman, Esq., Butler, Fitzgerald & Potter, P.C., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: January 23, 2003.

Claimant signed the Uniform Submission Agreement: January 9, 2003.

Joint Statement of Answer filed by Respondents on or about: April 11, 2003.

Respondent CISC signed the Uniform Submission Agreement: February 19, 2003.

Respondent Forrestal did not sign the Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract; fraud and misrepresentation – common law and statutory; respondeat superior and failure to supervise; and negligence and negligent supervision. The causes of action relate to mutual funds.

Unless specifically admitted in its Answer, Respondents denied the allegations of wrongdoing set forth in the Statement of Claim and asserted various affirmative defenses.

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$65,000.00; interest at 9% commencing August 31, 2000; attorneys' fees; costs; and punitive damages.

Respondents requested that the Statement of Claim be dismissed with prejudice; that they be awarded the costs incurred in defending against this proceeding; and that this matter be expunged from Forrestal's Central Registration Depository ("CRD") record.

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

Respondent Forrestal 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.

The claims in this proceeding have been resolved in their entirety by agreement of the parties. The parties have agreed and stipulated that this proceeding, and all claims in this proceeding, may be expunged from the registration records maintained by the CRD for Respondent Forrestal.

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**

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 an entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

1. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Juanita Forrestal's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Forrestal must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.
2. Each party shall bear its own costs and expenses, including attorneys' fees, except insofar as the parties have agreed that Respondents shall bear the costs of any further proceedings concerning expungement, and insofar as fees are specifically addressed below.
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 = \$225.00

**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 events giving rise to the dispute. In this matter, Chase Investment Services Corp. is a party.

Member Surcharge	= \$1,100.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$1,700.00</u>
Total Member Fees	= \$3,550.00

**Adjournment Fees**

The following adjournment fees are assessed:

December 16-18, 2003, adjournment requested by Claimant = \$750.00

**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:

Two (2) Pre-hearing conference sessions with the Panel @ \$750.00/session	= \$1,500.00
Pre-hearing conferences: July 15, 2003 1 session	
July 30, 2003 1 session	
<u>Total Forum Fees</u>	<u>= \$1,500.00</u>

1. The Panel has assessed \$750.00 of the forum fees against Claimant.
2. The Panel has assessed \$750.00 of the forum fees jointly and severally against Respondents.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 225.00
Adjournment Fee	= \$ 750.00
<u>Forum Fees</u>	<u>= \$ 750.00</u>
Total Fees	= \$1,725.00
<u>Less payments</u>	<u>= \$ 975.00</u>
Balance Due NASD Dispute Resolution	= \$ 750.00

2. Respondent CISC is solely liable for:

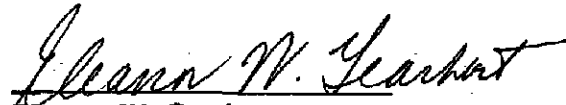
<u>Member Fees</u>	= \$3,550.00
<u>Total Fees</u>	= \$3,550.00
<u>Less payments</u>	= \$3,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 750.00
<u>Total Fees</u>	= \$ 750.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 750.00

All balances are due and payable to NASD Dispute Resolution

**Parties' Signatures**

  
\_\_\_\_\_  
Eleanor W. Gearhart  
Claimant

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

\_\_\_\_\_  
Chase Investment Services Corp.  
Respondent

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

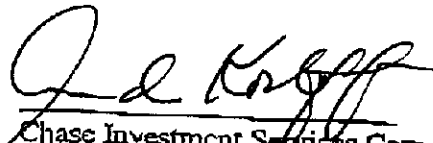
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Juanita Forrestal  
Respondent

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Signature Date

Parties' Signatures

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Eleanor W. Gearhart  
Claimant

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

  
\_\_\_\_\_  
Chase Investment Services Corp.  
Respondent *cancel*

10/22/04  
Signature Date

\_\_\_\_\_  
Juanita Forrestal  
Respondent

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

Parties' Signatures

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Elcanor W. Gearhart  
Claimant

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Signature Date

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Chase Investment Services Corp.  
Respondent

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Signature Date

  
Juanita Forrester  
Respondent

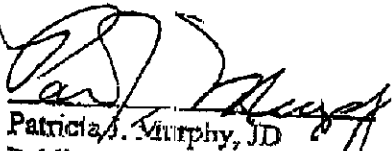
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**ARBITRATION PANEL**

Patricia J. Murphy, JD  
Harvey Casher  
Nathan J. Minucci

- Public Arbitrator, Presiding Chair  
- Public Arbitrator  
- Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Patricia J. Murphy, JD  
Public Arbitrator, Presiding Chair

11/30/04  
Signature Date

\_\_\_\_\_  
Harvey Casher  
Public Arbitrator

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

\_\_\_\_\_  
Nathan J. Minucci  
Non-Public Arbitrator

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

December 6, 2004

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Date of Service (For NASD office use only)



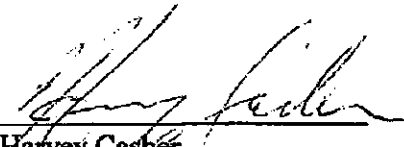
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Nathan J. Minucci	-	Non-Public Arbitrator

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Public Arbitrator, Presiding Chair

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Signature Date

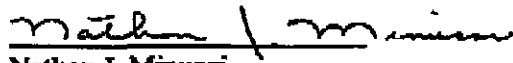
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Harvey Casher  
Public Arbitrator

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Signature Date

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Nathan J. Minucci  
Non-Public Arbitrator

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11/30/04  
Signature Date

December 6, 2004

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