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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Gayle A. Fernandez

Case Number: 03-00690

Names of the Respondents  
Robert W. Baird & Co. Incorporated  
Hibernia Investments, Inc.

Hearing Site: New Orleans, Louisiana

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

For Gayle A. Fernandez, hereinafter referred to as "Claimant": L. Jerome Stanley, Esq., Law Office of L. Jerome Stanley, Baton Rouge, Louisiana.

For Respondent Robert W. Baird & Co. Incorporated ("Baird"): David A. Baugh, Esq., Mora Baugh Waitzman & Unger, LLC, Chicago, Illinois.

For Respondent Hibernia Investments, Inc. ("Hibernia"): Roy C. Cheatwood, Esq. and Tom D. Snyder, Esq., Baker Donelson Bearman Caldwell & Berkowitz, PC, New Orleans, Louisiana.

**CASE INFORMATION**

Statement of Claim filed on or about: January 28, 2003.

Claimant signed the Uniform Submission Agreement: September 3, 2002.

Statement of Answer and Objection to Joinder filed by Respondent Hibernia on or about: March 31, 2004.

Respondent Hibernia signed the Uniform Submission Agreement: March 24, 2003.

Statement of Answer and Motion to Dismiss filed by Respondent Baird on or about: April 14, 2003.

Respondent Baird signed the Uniform Submission Agreement: March 4, 2003.

Response to Respondent Baird's Motion to Dismiss filed by Claimant on or about: September 19, 2003.

Objection to Joinder and Motion to Sever filed by Respondent Hibernia on or about: July 9, 2003.

Combined Objection to Consolidation and Joinder and Motion to Sever filed by Respondent Baird on or about: July 15, 2003.

Response to Respondent Hibernia's Objection to Joinder and Motion to Sever filed by Claimant on or about: September 23, 2003.

Response to Respondent Baird's Combined Objection to Consolidation and Joinder and Motion to Sever filed by Claimant on or about: September 23, 2003.

Motion to Dismiss filed by Respondent Hibernia on or about: October 23, 2003.

Response to Respondent Hibernia's Motion to Dismiss filed by Claimant on or about: November 12, 2003.

Reply to Claimant's Response to Respondent Hibernia's Motion to Dismiss filed by Respondent Hibernia on or about: November 19, 2003.

Sur-reply Brief in Response to Respondent Hibernia's Reply filed by Claimant on or about: November 24, 2003.

### **CASE SUMMARY**

Claimant asserted the following causes of action: reckless gross negligence and liability resulting from (1) the actions of non-party associated persons employed by Respondents, which violated the Louisiana Securities Act; and (2) the legal principles of respondeat superior and agent/principal. The causes of action against Respondent Hibernia relate to the purchase in Claimant's account of the following Class B mutual funds: Aim Value B; Aim Larg Cap Opportunities B; Alliance Growth & Income B; Alliance Premier Growth B; Alliance Select Inv. Series Premier B; Alliance Technology B; Fidelity Advisors Equity Growth B; Hibernia Capital Appreciation B; Hibernia Mid Cap Equity B; Oppenheimer Global B; Van Kampen Aggressive Growth B; Van Kampen Emerging Growth B; Aim Blue Chip B; Oppenheimer Emerging Technologies B; Oppenheimer International Growth B; and Van Kampen Select Growth B (collectively referred to herein as the "Mutual Funds"). The causes of action against Respondent Baird relate to the sale of the Mutual Funds and purchase of the following common stocks in Claimant's account: ADC Telecom Inc.; Cisco Systems; and JDS Uniphase Corp.

Unless specifically admitted in their Answers, Respondents denied the allegations made in the Statement of Claim and asserted various defenses.

### **RELIEF REQUESTED**

Claimant requested from Respondent Hibernia compensatory damages in the amount of \$142,897.99 and punitive damages in the amount of \$150,000.00. Claimant requested from Respondent Baird compensatory damages in the amount of \$214,677.50 and punitive damages in the amount of \$150,000.00. Claimant further requested an award against both Respondents for interest from the date of purchase to the date of repayment, less any income received, plus the costs of this arbitration, including filing fees and expert witness' fees, and attorneys' fees pursuant to the Louisiana Securities Act.

Respondent Hibernia requested that any and all relief sought by Claimant in the Statement of Claim be denied, that Respondent Hibernia be awarded its costs, expenses and attorneys' fees incurred in defending itself in this proceeding, that the Panel enter an order for expungement of this claim from any and all records and databases with respect to non-party Kenneth Riche, and that Respondent Hibernia be awarded all other relief to which it may be entitled under the premises.

Respondent Baird requested that the Statement of Claim and the relief requested therein be denied and dismissed in its entirety, that all costs and fees incurred in connection herewith should be assessed against Claimant, and that any such other and further relief be awarded as is deemed just, proper and equitable.

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

Respondent Baird filed a Combined Objection to Consolidation and Joinder and Motion to Sever, and Respondent Hibernia filed an Objection to Joinder and Motion to Sever, both of which asserted, among other things, that Claimant did not satisfy the prerequisites of Rule 10314(d) of the NASD Code of Arbitration Procedure (the "Code") regarding joinder because the claims asserted against Respondents do not arise out of

the same transaction or occurrence. In her responses, Claimant asserted, among other things, that the claims asserted by Claimant against Respondents do, in part, arise out of the same transaction or occurrence, and that there are questions of fact common to all Respondents, as required for the joinder of these claims pursuant to Rule 10314(d) of the Code.

Respondent Baird filed a Motion to Dismiss within its Statement of Answer, which asserted, among other things, that the Statement of Claim failed to state a claim upon which the relief requested may be granted, and that Rule 10305 of the Code provides that the Panel may dismiss a claim prior to a hearing if a claimant fails to meet the pleading requirements of the Code. In her response, Claimant asserted, among other things, that Rule 10305 of the Code does not give authority to a Panel for dismissing an arbitration based upon pleading deficiencies.

On or about October 3, 2003, the Panel issued an Order which denied Respondents' respective Motions to Sever and Respondent Baird's Motion to Dismiss.

Respondent Hibernia filed a Motion to Dismiss, which asserted, among other things, that Claimant's claims are time-barred. In her response, Claimant asserted, among other things, that her claims are not time-barred under the Louisiana Securities Act because she did not have actual knowledge of the facts upon which her cause of action is based. On or about December 12, 2003, the Panel issued an Order which denied Respondent Hibernia's Motion to Dismiss.

During the evidentiary hearing, Respondents moved for a directed verdict, and Respondent Baird moved to exclude Claimant's expert witness, both of which were denied by the Panel after oral opposition by Claimant.

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, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondent Baird is liable and shall pay to Claimant compensatory damages in the amount of \$30,000.00, plus interest at the rate of 5% per annum from the filing date of the Statement of Claim until the date of payment.

Claimant shall have no recovery against Respondent Hibernia.

Respondent Baird is liable and shall reimburse Claimant the sum of \$375.00, representing the claim filing fee paid by Claimant to NASD Dispute Resolution.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages, are 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 = \$ 375.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondents Baird and Hibernia are member firms and parties.

Respondent Baird's Member Surcharge	= \$1,700.00
Respondent Baird's Pre-hearing process fee	= \$ 750.00
<u>Respondent Baird's Hearing process fee</u>	<u>= \$2,750.00</u>
Respondent Baird's Total Member Fees	= \$5,200.00

Respondent Hibernia's Pre-hearing process fee	= \$ 750.00
<u>Respondent Hibernia's Hearing process fee</u>	<u>= \$2,750.00</u>
Respondent Hibernia's Total Member Fees	= \$3,500.00

#### **Adjournment Fees**

No adjournments were requested in this matter.

#### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

Injunctive relief fees were not assessed in this matter.

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

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

Two (2) Pre-hearing sessions with the Panel @ \$1,200.00/session	= \$ 2,400.00
Pre-hearing conferences:	
October 9, 2003	1 session
July 1, 2004	1 session

One (1) Pre-hearing session with a single arbitrator @ \$450.00/session	= \$ 450.00
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Pre-hearing conference:	May 4, 2004	1 session	
Six (6) Hearing sessions @ \$1,200.00/session			= \$ 7,200.00
Hearing Dates:	July 13, 2004	2 sessions	
	July 14, 2004	2 sessions	
	July 15, 2004	2 sessions	
<hr/> Total Forum Fees			= \$ 10,050.00

The Panel has assessed forum fees of \$3,350.00 to Claimant.

The Panel has assessed forum fees of \$6,700.00 to Respondent Baird.

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.

There were no administrative costs incurred in this matter.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 375.00
<u>Forum Fees</u>	= \$ 3,350.00
<u>Total Fees</u>	= \$ 3,725.00
<u>Less Payments</u>	= \$ 1,575.00
Balance Due NASD Dispute Resolution	= \$ 2,150.00

Respondent Baird is solely liable for:

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 6,700.00
<u>Total Fees</u>	= \$11,900.00
<u>Less Payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 6,700.00

Respondent Hibernia's is solely liable for:

Member Fees	= \$ 3,500.00
<u>Total Fees</u>	= \$ 3,500.00
<u>Less Payments</u>	= \$ 3,500.00
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**

Robert A. Kutcher, Esq.	-	Public Arbitrator, Presiding Chairperson
Daniel Eugene Bivins, III	-	Public Arbitrator
John J. Meyer, CLU	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/s/\_\_\_\_\_  
Robert A. Kutcher, Esq.  
Public Arbitrator, Presiding Chairperson

July 20, 2004  
Signature Date

\_\_\_\_\_/s/\_\_\_\_\_  
Daniel Eugene Bivins, III  
Public Arbitrator

July 19, 2004  
Signature Date

\_\_\_\_\_/s/\_\_\_\_\_  
John J. Meyer, CLU  
Non-Public Arbitrator

July 19, 2004  
Signature Date

July 20 2004  
Date of Service (For NASD Dispute Resolution office use only)

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NASD REGULATIONS

NO. 212 P. 7/7

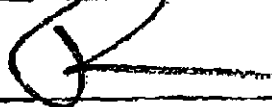
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ARBITRATION PANEL

Robert A. Kutcher, Esq.  
Daniel Eugene Bivins, III  
John J. Meyer, CLU

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator
- Non-Public Arbitrator

Concurring Arbitrators' Signatures

Robert A. Kutcher, Esq.  
Public Arbitrator, Presiding Chairperson

7/20/04  
Signature Date

\_\_\_\_\_  
Daniel Eugene Bivins, III  
Public Arbitrator

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

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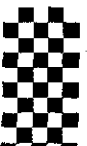
*Daniel Eugene Bivins, III*  
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Public Arbitrator

*July 19, 2004*  
Signature Date

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John J. Meyer, CLU  
Non-Public Arbitrator

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- Non-Public Arbitrator

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Signature Date

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John J. Meyer, CLU  
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7/19/04  
Signature Date

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Date of Service (For NASD Dispute Resolution office use only)