

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

**RECEIVED**

2004 MAR -9 A 8:55

In the Matter of the Arbitration Between:

Nora McHale, Claimant v. Cal Fed Investments, Respondent

REGISTRATION & DISCLOSURE

Case Number: 03-01461

Hearing Site: San Francisco, California

Nature of the Dispute: Customer vs. Member

**REPRESENTATION OF PARTIES**

For Claimant:

Brett A. Alcala, Esq.  
Alcala Law Firm  
San Mateo, California

For Respondent:

David Gorfinkel  
Citicorp Investment Services  
Long Island City, New York

**CASE INFORMATION**

Statement of Claim filed: February 20, 2003

Claimant's Uniform Submission Agreement signed: February 12, 2003

Statement of Answer filed by Respondent Cal Fed Investments nka Citicorp Investment Services ("CIS"): April 28, 2003

Respondent CIS' Uniform Submission Agreement signed: April 28, 2003

**CASE SUMMARY**

Claimant alleged the following claims with respect to investments in Dreyfus/Transamerica Contract No. 7867123 and American General Contract No. 90005742: 1) Failure to Supervise and Respondeat Superior; 2) Breach of Fiduciary Duty; 3) Breach of Contract; 4) Negligence and Negligent Misrepresentation; 5) Breach of the Implied Covenant of Good Faith and Fair Dealing; 6) Financial Abuse of an Elder; and 7) Violation of State Securities Laws, NASD Rules of Fair Practice and NYSE Rules.

Respondent denied Claimant's allegations of wrongdoing and denied any liability to Claimant. Respondent also asserted affirmative defenses.

### **RELIEF REQUESTED**

**Claimant requested:**

1. Rescission of Claimant's original investments and return of her principal; or actual/compensatory damages equal to approximately \$32,000.00, according to proof;
2. Pre-award and post-award interest from the date of the alleged violations as allowed by law;
3. Punitive damages equal to \$18,000.00, as allowed by law;
4. Legal fees (including expert fees) plus the costs incurred in this arbitration, as allowed by law; and
5. Such other and further relief as the Arbitrator deems appropriate.

**Respondent requested:**

1. That the Statement of Claim be dismissed in its entirety;
2. That the Arbitrator award Respondent legal fees and interest thereon; and
3. Such other and further relief as the Arbitrator deems appropriate.

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

On March 13, 2003, Claimant and Claimant's 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.

On April 28, 2003, Respondent's 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.

### **AWARD**

After considering the pleadings, testimony, and evidence presented at the hearing, and the post-hearing submissions, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent is liable for and shall pay to Claimant the sum of \$19,524.00 in compensatory damages plus interest on this amount at the rate of 4% per annum from February 1, 2004 until the last day of the month in which the Award is paid.
- 2) Claimant's claim for punitive damages is denied.
- 3) Each party shall bear its own costs, including attorney's fees.

- 4) All other relief not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD-DR received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee = \$ 175.00

#### **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, CIS is a party and the following fees are assessed:

Member Surcharge = \$ 875.00

Pre-Hearing Process Fee = \$ 750.00

Hearing Process Fee = \$1,000.00

Total Member Fees = \$2,625.00

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

The Arbitrator 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:

(2) Pre-hearing conference sessions with a single arbitrator @ \$450.00/session = \$900.00

Pre-hearing conferences:	June 30, 2003	1 session
	December 1, 2003	1 session

(4) Hearing sessions @ \$450.00/session = \$1,800.00

Hearing:	January 21, 2004	2 sessions
	January 22, 2004	2 sessions

---

Total Forum Fees = \$2,700.00

The Arbitrator assessed \$450.00 in forum fees to Respondent CIS in connection with the pre-hearing conference held December 1, 2003.

The Arbitrator waived the \$450.00 forum fee in connection with the hearing session held during the morning of January 21, 2004.

Of the remaining forum fees, the Arbitrator assessed \$900.00 to Claimant and assessed \$900.00 to Respondent.

**Fee Summary**

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 175.00
<u>Forum Fees</u>	= \$ 900.00
Total Fees	= \$ 1,075.00
<u>Less Payments</u>	= \$ (625.00)
Balance Due NASD-DR	= \$ 450.00

2. Respondent, CIS is charged with the following fees and costs:

Member Fees	= \$ 2,625.00
<u>Forum Fees</u>	= \$ 1,350.00
Total Fees	= \$ 3,975.00
<u>Less Payments</u>	= \$ (3,075.00)
Balance Due NASD-DR	= \$ 900.00

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

**ARBITRATION PANEL**

Dean J. Dietrich, Esq.

- Public Arbitrator, Presiding Chair

**Presiding Arbitrator's Signature**

  
Dean J. Dietrich, Esq.  
Chair, Public Arbitrator

Feb. 23, 2004  
Signature Date

2.23.2004  
Date of Service

**Fee Summary**

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 175.00
Forum Fees	= \$ 900.00
<hr/> Total Fees	<hr/> = \$ 1,075.00
Less Payments	= \$ (625.00)
<hr/> Balance Due NASD-DR	<hr/> = \$ 450.00

2. Respondent, CIS is charged with the following fees and costs:

Member Fees	= \$ 2,625.00
Forum Fees	= \$ 1,350.00
<hr/> Total Fees	<hr/> = \$ 3,975.00
Less Payments	= \$(3,075.00)
<hr/> Balance Due NASD-DR	<hr/> = \$ 900.00

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

**ARBITRATION PANEL**

Dean J. Dietrich, Esq.

- Public Arbitrator, Presiding Chair

**Presiding Arbitrator's Signature**

\_\_\_\_\_  
Dean J. Dietrich, Esq.  
Chair, Public Arbitrator

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

\_\_\_\_\_  
Date of Service