

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Claimant

Grace Conrad, by and through Rita M. Liechty,  
Trustee of the Grace N. Conrad Living Trust

v.

Case Number: 03-01675  
Hearing Site: Southfield, Michigan

Respondents

USAllianz Securities, Inc. a/k/a LIFEUSA  
Securities Inc., Jefferson Pilot Securities  
Corporation, Jefferson Pilot Financial, James J.  
Morrison, and James J. Morrison & Associates

And

Cross-Claimant

Jefferson Pilot Securities Corp.

v.

Respondents/Cross-Respondents

James J. Morrison and James J. Morrison &  
Associates

And

Respondent/Third-Party Claimant

Jefferson Pilot Securities Corp.

v.

Third-Party Respondents

Southern Michigan Bancorp, Inc., James  
Briskey, H. Kenneth Cole, William Galliers,  
Noland E. Hook, Gregory J. Hull, Thomas E.  
Kolassa, and Freeman Riddle

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**NATURE OF DISPUTE**

Customer v. Members, Non-Members and Associated Person  
Member v. Associated Person and Non-Member  
Member v. Non-Members

### **REPRESENTATION OF PARTIES**

Grace Conrad, by and through Rita M. Liechty, Trustee of the Grace N. Conrad Living Trust ("Claimant") was represented by Joseph H. Spiegel, Esq., Law Offices of Joseph H. Spiegel, Ann Arbor, Michigan.

USAllianz Securities, Inc. a/k/a LIFEUSA Securities Inc. ("USAllianz") was represented by Catherine A. McEnroe, Esq., Leonard, Street and Deinard, PA, Minneapolis, Minnesota.

Jefferson Pilot Securities Corporation and Jefferson Pilot Financial ("Jefferson Pilot Repondents") were represented by Gary M. Saretsky, Esq., and Karen A. Gould, Esq., Hertz, Schram & Saretsky, P.C., Bloomfield Hills, Michigan

James J. Morrison and James J. Morrison & Associates ("Morrison Respondents") were represented by Walter Baumgardner, Esq., Musilli, Baumgardner & Parnell, PLLC, St. Claire Shores, Michigan.

Southern Michigan Bancorp, Inc., James Briskey, H. Kenneth Cole, William Galliers, Noland E. Hook, Gregory J. Hull, Thomas E. Kolassa, and Freeman Riddle ("Third-Party Respondents") were represented by Joseph H. Spiegel, Esq., Law Offices of Joseph H. Spiegel, Ann Arbor, Michigan.

### **CASE INFORMATION**

The Statement of Claim was filed on or about March 10, 2003. The Submission Agreement of Grace Conrad, by and Through Rita M. Liechty, Trustee of the Grace N. Conrad Living Trust was signed on or about February 10, 2003, by Rita M. Liechty, POA.

The Statement of Answer and Motion to Dismiss was filed by USAllianz Securities, Inc. a/k/a LIFEUSA Securities Inc. on or about December 10, 2003. The Submission Agreement of USAllianz Securities, Inc. a/k/a LIFEUSA Securities Inc. was signed on or about December 9, 2003.

The Statement of Answer and Motion to Dismiss was filed by Jefferson Pilot Securities Corporation and Jefferson Pilot Financial on or about October 23, 2004. Jefferson Pilot Securities Corporation filed a Cross-Claim and a Third-Party Claim on or about October 23, 2004. The Submission Agreement of Jefferson Pilot Securities Corporation was filed on or about March 15, 2004.

The Statement of Answer was filed by James J. Morrison and James J. Morrison & Associates on or about July 7, 2003. The Submission Agreement of James J. Morrison and James J. Morrison & Associates was signed on or about March 15, 2004.

Claimant filed a Motion for Summary Disposition and Brief in Response to Jefferson Pilot Securities Corporation's Motion to Dismiss on or about November 24, 2003. Jefferson Pilot Securities Corporation filed a Response to Claimant's Motion for Summary Disposition on or about February 3, 2004. USAllianz filed a Response to Claimant's Motion for Summary Disposition on or about December 10, 2003. The Morrison Respondents filed a Response to the Motion for Summary Judgment on or about December 15, 2003.

The Morrison Respondents filed a Response to Cross-Claim on or about December 15, 2003. The Morrison Respondents concurred in Jefferson Pilot Securities Corporation's Motion to Dismiss on or about December 15, 2003.

Claimant filed a Response to USAllianz's Motion to Dismiss on or about December 22, 2003.

Claimant filed a Motion to Dismiss Jefferson Pilot Securities Corporation's Third Party Complaint Against Southern Michigan Bancorp, Inc.'s Officers and Directors on or about February 4, 2004. Jefferson Pilot Securities Corporation filed a Response to the Motion on or about April 8, 2004. Claimant filed a Reply to Jefferson Pilot's Response to Conrad's Motion to Dismiss Jefferson Pilot's Third-Party Claims on or about April 14, 2004. The Morrison Respondents filed their Support for Jefferson Pilot Securities Corporation's Response to Claimant's Motion to Dismiss Jefferson Pilot Securities Corporation's Counter-Claim and Third Party Claim on or about April 19, 2004.

USAllianz filed a Motion for Temporary Stay of Arbitration on or about June 4, 2003.

The Morrison Respondents filed a Motion for Summary Judgment or Dismissal on or about December 28, 2004. Claimant filed a Response to the Motion on or about January 4, 2005.

### **CASE SUMMARY**

Claimant asserted the following causes of action: liability under 1934 Act anti-fraud provisions (all Respondents); violations of §§ 12 and 17 of the Securities Act of 1933, as amended; liability under the 1933 Act anti-fraud provisions (all Respondents); liability under Michigan blue sky law; liability for common law fraudulent misrepresentation, negligent misrepresentation, and silent fraud; liability for breach of common law fiduciary duty (all Respondents); Michigan Consumer Protection Act violations (all Respondents); and RICO violations. The causes of action related to the sale of viatical contracts, which according to Claimant were contrary to her best interests.

Unless specifically admitted in its Answer, USAllianz Securities, Inc. a/k/a LIFEUSA Securities Inc., denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim fails to state a claim upon which relief can be granted; Conrad and Liechty directed the viatical purchases; and Claimant cannot recover against USAllianz because USAllianz had no ongoing duty to monitor Morrison's prior viatical sales.

Unless specifically admitted in their Answer, the Jefferson Pilot Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant's Statement of Claim fails to state a claim upon which relief can be granted; viaticals were not securities at the time of the disputed purchases; and Claimant fails to plead fraud with the requisite particularity.

Jefferson Pilot Securities Corporation asserted a Cross-Claim against the Morrison Respondents for indemnification, contribution, negligence, breach of contract, promissory estoppel, estoppel by deed and fraud.

Jefferson Pilot Securities Corporation asserted a Third-Party Claim against Southern Michigan Bancorp and its directors for indemnification, contribution, negligence, breach of contract, promissory estoppel, estoppel by deed and fraud.

Unless specifically admitted in their Response to Cross-Claim, the Morrison Respondents denied the allegations made in the Cross-Claim, and asserted various affirmative defenses.

Unless specifically admitted in their Answer, the Morrison Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: failure to state a claim upon which relief can be granted; statute of limitations; waiver; estoppel; assumption of risk; contributory negligence; failure to plead with particularity; laches and lack of consideration for guarantee of performance.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$88,000.00, plus rescission, interest, \$100,000.00 in exemplary damages, treble damages, costs, expenses, and such other just and equitable relief as the panel deems necessary and proper.

USAllianz requested that the claims asserted against it be dismissed in their entirety and that it be awarded its costs and attorneys' fees.

The Jefferson Pilot Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. Jefferson Pilot Securities Corporation requested indemnification and contribution in its Cross-Claim. Jefferson Pilot Securities Corporation requested indemnification and contribution in its Third-Party Claim.

The Morrison Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

The Third-Party Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

Jefferson Pilot Financial did not file with the NASD Dispute Resolution a properly executed submission to arbitration but having answered the claim, and appeared and testified at the pre-hearings through a designated representative, is bound by the determination of the arbitration panel on all issues submitted.

After arguments addressing Third-Party Respondents' Motion to Dismiss, the panel dismissed the third-party claims against Southern Michigan Bancorp, Inc., James Briskey, H. Kenneth Cole, William Galliers, Noland E. Hook, Gregory J. Hull, Thomas E. Kolassa, and Freeman Riddle in its Order entered on or about July 9, 2004.

After arguments, the panel denied Claimant's Motion for Summary Disposition without prejudice, the panel denied USAllianz's Motion to Dismiss without prejudice, and the Panel denied the Motion to Dismiss submitted by Jefferson Pilot Securities Corporation and Jefferson Pilot Financial without prejudice in its ordered entered on or about July 9, 2004.

The panel did not rule on USAllianz's Motion for Temporary Stay of Arbitration.

On February 7, 2005, Respondent Jefferson Pilot dismissed its cross-claim against James J. Morrison and James J. Morrison & Associates and requested that the dismissal be without prejudice.

At the hearing, Claimant advised the panel that it had settled with and dismissed all claims against USAllianz Securities, Inc. a/k/a LIFEUSA Securities Inc., Jefferson Pilot Securities Corporation, and Jefferson Pilot Financial, and requested that the dismissal be without prejudice.

The panel denied the Morrison Respondents' Motion for Summary Judgment or Dismissal at the hearing.

The Morrison Respondents orally moved for dismissal for lack of jurisdiction at the hearing. Respondents later withdrew the motion.

The Morrison Respondents orally moved for dismissal at the hearing. The panel denied the Motion.

At the hearing, the panel noted that Claimant clarified the Statement of Claim to reflect that the securities were purchased by Claimant and were not sold by Claimant.

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. In either case, the parties

have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Respondents, James J. Morrison and James J. Morrison & Associates, are jointly and severally liable for and shall pay to Claimant, Grace Conrad, the sum of \$5,104.00 in costs;
- 2.) Respondents, James J. Morrison and James J. Morrison & Associates, are jointly and severally liable for and shall pay to Claimant, Grace Conrad, the sum of \$56,467.00 (an amount associated with Viatical Settlement Contract PRA #98440; contract owner: Grace N. Conrad Trust; due date 9/16/01);
- 3.) Respondents, James J. Morrison and James J. Morrison & Associates, are jointly and severally liable for and shall pay to Claimant, Grace Conrad, the sum of \$16,755.00 (an amount associated with Viatical Settlement Contract PRS #98460; contract owner: Grace N. Conrad Trust; due date 11/30/01);
- 4.) Respondents, James J. Morrison and James J. Morrison & Associates, are jointly and severally liable for and shall pay to Claimant, Grace Conrad, the sum of \$24,515.00 (an amount associated with Viatical Settlement Contract PRA #122628; contract owner: Grace N. Conrad Trust joint tenant with Rita Liechty; due date 4/23/02);
- 5.) Respondents, James J. Morrison and James J. Morrison & Associates, are jointly and severally liable for and shall pay to Claimant, Grace Conrad, the sum of \$24,515.00 (an amount associated with Viatical Settlement Contract PRA #122630; contract owner: Grace N. Conrad Trust joint tenant with Lanna Troyer; due date 4/23/02);
- 6.) Provided, however, that the portions of this Award associated with the various Viatical Settlement Contracts referenced in paragraphs (2) through (5) above shall be specifically and individually conditioned, on a contract-by-contract basis, upon the full and absolute assignment to Respondents, James J. Morrison and James J. Morrison & Associates jointly, of any and all rights and claims that the above referenced contract owners may have respecting the above referenced contracts, arising out

of or concerning the conservatorship established under the Order Appointing Conservator for Future First Financial Group, Inc., dated August 9, 2002, entered by the 7<sup>th</sup> Judicial Circuit Court in and for St. Johns County, Florida, by the Honorable J. Michael Trayner;

- 7.) Claimant's claims against, USAllianz Securities, Inc. a/k/a LIFEUSA Securities Inc., Jefferson Pilot Securities Corporation, and Jefferson Pilot Financial, are dismissed without prejudice;
- 8.) *Jefferson Pilot Securities Corporation's cross-claim is dismissed without prejudice; and*
- 9.) Any relief not specifically enumerated, including punitive damages and attorney fees, is hereby denied with prejudice.

### **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                     | = \$ 300.00   |
| Cross claim and Third Party Claim filing fee | = \$ 1,000.00 |

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person(s) at the time of the events giving rise to the dispute. In this matter, the member firms are USAllianz Securities, Inc. a/k/a LIFEUSA Securities Inc., and Jefferson Pilot Securities Corporation.

|                         |               |
|-------------------------|---------------|
| Member surcharge        | = \$ 1,700.00 |
| Pre-hearing process fee | = \$ 750.00   |
| Hearing process fee     | = \$ 2,750.00 |

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

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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:

|   |             |
|---|-------------|
| One (1) Pre-hearing session with a single arbitrator x \$450.00 | = \$ 450.00 |
| Pre-hearing conference: January 4, 2005 1 session               |             |

|  |               |
|--|---------------|
| Two (2) Pre-hearing sessions with Panel x \$1,125.00 | = \$ 2,250.00 |
| Pre-hearing conferences: April 19, 2004              | 1 session     |
| June 22, 2004  | 1 session     |
| Four (4) Hearing sessions x \$1,125.00               | = \$ 4,500.00 |
| Hearing Dates: February 8, 2005                      | 2 sessions    |
| February 9, 2005                                     | 2 sessions    |
| Total Forum Fees                                     | = \$ 7,200.00 |

The Arbitration Panel has assessed \$7,200.00 of the forum fees jointly and severally to James J. Morrison and James J. Morrison & Associates.

Pursuant to NASD Code of Arbitration Procedure Rule 10332(f), Jefferson Pilot Securities Corp.'s Hearing Session Deposit of \$1,125.00 is retained by NASD.

#### **Fee Summary**

Claimant, Grace Conrad, is liable for:

|   |               |
|---|---------------|
| Initial Filing Fee                          | = \$ 300.00   |
| Total Fees                                  | = \$ 300.00   |
| Less payments                               | = \$ 1,425.00 |
| Balance Refunded by NASD Dispute Resolution | = \$ 1,125.00 |

Respondent, USAllianz Securities, Inc. a/k/a LIFEUSA Securities Inc., is liable for:

|                                     |               |
|-------------------------------------|---------------|
| Member Fees                         | = \$ 5,200.00 |
| Total Fees                          | = \$ 5,200.00 |
| Less payments                       | = \$ 5,200.00 |
| Balance Due NASD Dispute Resolution | = \$ 0.00     |

Respondent, Jefferson Pilot Securities Corporation, is liable for:

|   |               |
|---|---------------|
| Counterclaim/Cross-Claim Filing Fee         | = \$ 1,000.00 |
| Retained Hearing Session Deposit            | = \$ 1,125.00 |
| Member Fees                                 | = \$ 5,200.00 |
| Total Fees                                  | = \$ 7,325.00 |
| Less payments                               | = \$ 8,825.00 |
| Balance Refunded by NASD Dispute Resolution | = \$ 1,500.00 |

Respondents, James J. Morrison and James J. Morrison & Associates are jointly and severally liable for:

|                                     |               |
|-------------------------------------|---------------|
| Forum Fees                          | = \$ 7,200.00 |
| Total Fees                          | = \$ 7,200.00 |
| Less payments                       | = \$ 0.00     |
| Balance Due NASD Dispute Resolution | = \$ 7,200.00 |

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

**ARBITRATION PANEL**

Patrick R. Sughrue, Esq. - Public Arbitrator, Presiding Chair  
Barbara A. Johannessen, Esq. - Public Arbitrator  
Chris D. Kontos - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Patrick R. Sughrue, Esq.  
Patrick R. Sughrue, Esq.  
Public Arbitrator, Presiding Chair

02/10/05  
Signature Date

/s/ Barbara A. Johannessen, Esq.  
Barbara A. Johannessen, Esq.  
Public Arbitrator

02/10/05  
Signature Date

/s/ Chris D. Kontos  
Chris D. Kontos  
Non-Public Arbitrator

02/10/05  
Signature Date

02/10/05  
Date of Service (For NASD office use only)

NASD Dispute Resolution  
Arbitration No. 03-01875  
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**ARBITRATION PANEL**

Patrick R. Sughrue, Esq. - Public Arbitrator, Presiding Chair  
Barbara A. Johannessen, Esq. - Public Arbitrator  
Chris D. Kontos - Non-Public Arbitrator

Concurring Arbitrators:

  
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Patrick R. Sughrue, Esq.  
Public Arbitrator, Presiding Chair

2-10-05  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Barbara A. Johannessen, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Chris D. Kontos  
Non-Public Arbitrator

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

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Date of Service (For NASD office use only)

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Patrick R. Sughrue, Esq. - Public Arbitrator, Presiding Chair  
Barbara A. Johannessen, Esq. - Public Arbitrator  
Chris D. Kontos - Non-Public Arbitrator


Concurring Arbitrators:

\_\_\_\_\_  
Patrick R. Sughrue, Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Barbara A. Johannessen, Esq.  
Public Arbitrator

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

  
\_\_\_\_\_  
Chris D. Kontos  
Non-Public Arbitrator

*Feb. 10, 2005*  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Date of Service (For NASD office use only)

NASD Dispute Resolution  
Arbitration No. 03-01876  
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**ARBITRATION PANEL**

Patrick R. Sughrue, Esq. - Public Arbitrator, Presiding Chair  
Barbara A. Johannessen, Esq. - Public Arbitrator  
Chris D. Kontos - Non-Public Arbitrator

Concurring Arbitrators:

\_\_\_\_\_  
Patrick R. Sughrue, Esq.  
Public Arbitrator, Presiding Chair

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

  
\_\_\_\_\_  
Barbara A. Johannessen, Esq.  
Public Arbitrator

10 FEBRUARY 2005  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Chris D. Kontos  
Non-Public Arbitrator

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

\_\_\_\_\_  
Date of Service (For NASD office use only)