

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

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In the Matter of the Arbitration Between:

Names of the Claimants

Richard Marcoux and  
Audrey Marcoux

Case Number: 03-01810

Names of the Respondents

Southwest Securities, Inc.  
Signal Securities, Inc.  
Barbara A. Mutsaers

Hearing Site: Washington, DC

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Nature of the Dispute: Customers vs. Members and Associated Person.

REPRESENTATION OF PARTIES

Claimants, Richard Marcoux and Audrey Marcoux, hereinafter collectively referred to as "Claimants", were represented by Joseph R. Price, Esq., Arent Fox, PLLC, Washington, DC.

Respondent, Southwest Securities, Inc. ("Southwest"), was represented by C. Bryce Benson, Esq., Jenkins & Gilchrist, Dallas, Texas.

Respondent, Signal Securities, Inc. ("Signal"), was represented by Gilbert W. Boyce, Esq., Kutak Rock, LLP, Washington, DC.

Respondent, Barbara A. Mutsaers ("Mutsaers"), was not represented by counsel and appeared *pro se*.

CASE INFORMATION

Statement of Claim filed on March 12, 2003.

Claimants signed the Uniform Submission Agreement on March 24, 2003.

Statement of Answer and Motion to Dismiss filed by Respondent Southwest on June 2, 2003.

Motion to Dismiss and First Amended Answer filed by Southwest on December 15, 2003.

A representative of Respondent Southwest executed the Uniform Submission Agreement on April 22, 2003.

Statement of Answer filed by Respondent Signal on June 18, 2003.

A representative of Respondent Signal executed the Uniform Submission Agreement on May 21, 2003.

Statement of Answer filed by Respondent Mutsaers on July 1, 2003.

Respondent Mutsaers signed the Uniform Submission Agreement on July 1, 2003.

Claimants filed Opposition to Southwest's Motion to Dismiss on September 29, 2003.

### CASE SUMMARY

Claimants asserted the following causes of action, among others: unsuitability, failure to disclose risks, and unauthorized trading. The causes of action relate to the purchase of Jackson National Annuity Contracts.

Unless specifically admitted in its Answer, Respondent Southwest denied the allegations made in the Statement of Claim and asserted the following defenses, among others: comparative and/or contributory negligence; failure to mitigate damages; and Claimants' claims are barred by waiver, ratification and estoppel.

Unless specifically admitted in its Answer, Respondent Signal denied the allegations made in the Statement of Claim and asserted the following defenses, among others: statutes of limitations; estoppel laches; failure to mitigate damages; contributory negligence; and ratification.

Unless specifically admitted in her Answer, Respondent Mutsaers denied the allegations made in the Statement of Claim and incorporated by reference the defenses to Claimants' claims as set forth in Respondent Signal's Answer.

### RELIEF REQUESTED

Claimants in their Statement of Claim requested:

Compensatory Damages	\$ 60,000.00
Punitive Damages	\$100,000.00
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondent Southwest in its Statement of Answer and Amended Statement of Answer requested that Claimants' claims be dismissed in their entirety and that it be awarded all costs and attorneys' fees.

Respondent Signal in its Statement of Answer requested that Claimants' claims be dismissed and that Claimants pay all surcharges and forum fees.

Respondent Mutsaers requested that Claimants' claims against her be denied.

### OTHER ISSUES CONSIDERED AND DECIDED

Following oral arguments on Respondent Southwest's Motion to Dismiss, the Arbitration Panel (the "Panel") denied the motion on or About April 28, 2004.

At the conclusion of Claimants' case-in-chief, Respondent Signal moved that the Panel dismiss the case. Having heard oral arguments, the Panel denied the motion.

On October 18, 2004 Claimants entered into a settlement agreement with Respondent Southwest.

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.

#### AWARD

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

1. Respondents Signal and Mutsaers are jointly and severally liable to and shall pay to Claimants compensatory damages in the amount of six thousand dollars and no cents (\$6,000.00);
2. All claims for punitive damages and attorneys' fees are denied in their entirety;
3. The parties shall bear their respective costs, except as Fees are specifically addressed below; and
4. Any and all relief not specifically addressed herein is denied in its entirety.

#### 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

##### 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. Accordingly, Southwest and Signal are parties.

##### Southwest Member Fees

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00
Total Member Fees	= \$ 5,200.00

##### Signal Member Fees

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00
Total Member Fees	= \$ 5,200.00

#### 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 Panel @ \$1,125.00	= \$ 2,250.00
Pre-hearing conferences:     December 15, 2003     1 session	
April 28, 2004         1 session	
Five (5) Hearing sessions @ \$1,125.00	= \$ 5,625.00
Hearing Dates:             October 25, 2004     2 sessions	
October 26, 2004     2 sessions	
October 27, 2004     1 session	
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Total Forum Fees	= \$ 7,875.00

1. The Panel has assessed \$2,625.00 of the forum fees jointly and severally to Claimants.
2. The Panel has assessed \$2,625.00 of the forum fees to Respondent Signal.
3. The Panel has assessed \$2,625.00 of the forum fees to Respondent Mutsaers.

#### FEE SUMMARY

1. Claimants are jointly and severally assessed and shall pay the following fees:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 2,625.00
Total Fees	= \$ 2,925.00
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 1,500.00
2. Respondent Southwest is assessed and shall pay the following fees:

Member Fees	= \$ 5,200.00
Total Fees	= \$ 5,200.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 00.00
3. Respondent Signal is assessed and shall pay the following fees:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 2,625.00
Total Fees	= \$ 7,825.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 2,625.00
5. Respondent Mutsaers is assessed and shall pay the following fees:

Forum Fees	= \$ 2,625.00
Total Fees	= \$ 2,625.00
Less payments	= \$ 00.00

Balance Due NASD Dispute Resolution

= \$ 2,625.00

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


ARBITRATION PANEL

William H. Malloy, Jr., Esq.  
Joseph O'Donnell  
Steven R. Bralove

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

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Concurring Arbitrators' Signatures

  
William H. Malloy, Jr., Esq.  
Public Arbitrator, Presiding Chairperson

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Signature Date

\_\_\_\_\_  
Steven R. Bralove  
Non-Public Arbitrator, Panelist

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

Dissenting Arbitrator's Signature

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Joseph O'Donnell  
Public Arbitrator, Panelist

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Signature Date

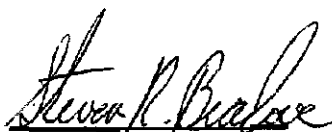
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Public Arbitrator, Presiding Chairperson

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Signature Date



Steven R. Bralove  
Non-Public Arbitrator, Panelist

11/2/04  
Signature Date

Dissenting Arbitrator's Signature

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Joseph O'Donnell  
Public Arbitrator, Panelist

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Public Arbitrator, Presiding Chairperson

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Signature Date:

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Steven R. Bralove  
Non-Public Arbitrator, Panelist

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

Dissenting Arbitrator's Signature

Joseph O'Donnell  
Joseph O'Donnell  
Public Arbitrator, Panelist

Nov. 1, 2004  
Signature Date

11/5/04  
\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution office use only)