

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

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In the Matter of the Arbitration Between

Claimants

Gregory Thompson and Kathy Hastings

v.

03-02986

Minneapolis, Minnesota

Respondents

New England Securities Corporation  
and New England Financial

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Nature of Dispute: Customers v. Member and Non-Member

**REPRESENTATION OF PARTIES**

Gregory Thompson and Kathy Hastings ("Claimants") were represented by Harvey H. Eckart, Esq., of Eckart & Leonetti, P.A., Saint Paul, Minnesota.

New England Securities Corporation ("NESC") and New England Financial ("NEF"), were represented by Ahna M. Thoresen, Esq., of Faegre & Benson, LLP, Minneapolis, Minnesota.

**CASE INFORMATION**

The Statement of Claim was filed on or about April 16, 2003. Submission Agreements of Claimants were signed on or about March 12, 2003.

A Statement of Answer was filed by Respondent New England Securities Corporation on or about June 27, 2003. Submission Agreement of Respondent New England Securities Corporation was signed on or about April 22, 2003.

**CASE SUMMARY**

Claimants asserted causes of action including the following: breach of contract, negligence, suitability, violation of Minnesota Blue Sky Law, failure to supervise, and respondeat superior liability. The causes of action related to Claimants' allegations that Respondents made an unsuitable recommendation to purchase variable insurance policies, which according to Claimant, were actually speculative and volatile mutual funds concentrated in emerging and growth oriented companies. Claimants also alleged that Respondents failed to diversify Claimants' assets into fixed income investments, and that given their financial goal of financial assistance for their grandchildren's education, the variable insurance policies were not a suitable recommendation.

Respondent NESC denied the allegations set forth in the Statement of Claim and asserted defenses including the following: Claimants were fully aware that the mutual funds and stocks held in their brokerage account were growth-orientated and were not diversified across asset categories, consistent with their investment objectives; Claimants received monthly account statements that showed the declining value of their investments and did not complain about the stock and mutual funds held in their account until over a year-and-a-half after they made their investments, and as such their claims should be barred; and despite Claimants' knowledge of the risks associated with growth-orientated investments, they made no attempt to liquidate or change their positions to more conservative investments.

### **RELIEF REQUESTED**

Claimants requested an award in the amount of \$32,289 in compensatory damages, plus interest, attorney's fees and for any other relief that the Panel deemed just and equitable. At the arbitration hearing, Claimants increased their compensatory damage relief to \$52,301.

Respondent NESC 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**

Respondent NEF is neither a NASD member firm nor an associated person of an NASD member firm. NASD Dispute Resolution did not receive a contract to arbitrate or a voluntary submission from New England Financial. Pursuant to NASD Code of Arbitration Procedure, NASD does not have jurisdiction over this party; therefore, the Panel did not adjudicate any of the claims asserted against New England Financial.

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 originals 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. Respondent New England Securities Corporation is liable for and shall pay to Claimant, Gregory Thompson, the sum of Forty Five Thousand Dollars and No Cents (\$45,000.00) in compensatory damages;

2. Respondent New England Securities Corporation is liable for and shall pay to Claimant, Gregory Thompson, the sum of Fifteen Thousand Dollars and No Cents (\$15,000.00) in attorney's fees pursuant to M.S. § 80A.23;
3. Respondent New England Securities Corporation is liable for and shall pay to Claimant, Gregory Thompson, interest at the Minnesota statutory rate on the above-stated sum from and including 4/23/2003, through and including the date this award is paid in full;
4. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, are denied with prejudice.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee = \$ 175

#### **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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is New England Securities Corporation.

Member surcharge	= \$ 875
Pre-hearing process fee	= \$ 750
Hearing process fee	= \$ 1,000

#### **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 Panel x \$ 600	= \$ 600
Pre-hearing conference: 11/05/2003 1 session	
Five (5) Hearing sessions with Panel x \$ 600	= \$ 3,000

Hearing Dates:	02/10/2004	2 sessions
	02/11/2004	2 sessions
	02/12/2004	1 session

Total Forum Fees = \$ 3,600

The Arbitration Panel has assessed \$ 3,600 of the forum fees to New England Securities Corporation.

**Fee Summary**

Claimant, Gregory Thompson and Kathy Hastings is liable for:

<u>Initial Filing Fee</u>	= \$ 175
<u>Total Fees</u>	= \$ 175
<u>Less payments</u>	= \$ 775
Balance Refunded By NASD Dispute Resolution	= \$ 600

Respondent, New England Securities Corporation, is liable for:

<u>Member Fees</u>	= \$ 2,625
<u>Forum Fees</u>	= \$ 3,600
<u>Total Fees</u>	= \$ 6,225
<u>Less payments</u>	= \$ 4,125
Balance Due NASD Dispute Resolution	= \$ 2,100

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

ARBITRATION PANEL

Earl B. Gustafson - Public Arbitrator, Presiding Chair  
D. Randall Blohm, Esq. - Public Arbitrator  
Stephen H. Fischer- Non-Public Arbitrator

Concurring Arbitrators:

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Earl B. Gustafson  
Public Arbitrator, Presiding Chair

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Signature Date

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D. Randall Blohm, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Stephen H. Fischer  
Non-Public Arbitrator

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

2/5/04  
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Date of Service (NASD use only)

## NASD Dispute Resolution

Arbitration No. 03-02986

Award Page 5 of 5

**ARBITRATION PANEL**

Earl B. Gustafson - Public Arbitrator, Presiding Chair

D. Randall Blohm, Esq. - Public Arbitrator  
Stephen H. F.

**Stephen H. Fischer-Non-Public Arbitrator**

### Concurring Arbitrators:

*Earl B. Gustafson*  
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Public Arbitrator, Presiding Chair

**Earl B. Gustafson**

**Public Arbitrator, Presiding Chair**

March 5, 2004

**Signature Date**

**D. Randall Blohm, Esq.**  
**Public Arbitrator**

## Public Arbitrator

Signature Date

**Stephen H. Fischer**  
**Non-Public Arbitrator**

**Stephen H. Fischer**

### Non-Public Arbitrator

Signature Date

**Date of Service (NASD use only)**

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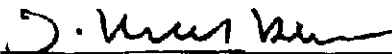
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3-1-04  
\_\_\_\_\_  
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Non-Public Arbitrator

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