

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

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In the Matter of the Arbitration Between:

KENNETH J. CRAWFORD, CYNTHIA A. JESSE  
and PATRICK L. CRAWFORD, Individually and  
as Co-Trustees of the Patrick J. Crawford Grantor  
Retained Annuity Trusts #1, #2, #3, #4, #5 and #6,  
MICHAEL T. CRAWFORD, SAMUEL J. CRAWFORD,  
ELIZABETH M. FLEMING, KATHRYN D. SCHUH  
and MARY ELLEN TREE,

Case Number: 03-03667

Hearing Site: Milwaukee, Wisconsin

Claimants,

v.

NATIONAL FINANCIAL SERVICES, LLC,  
And SECURITIES AMERICA, INC.,

Respondents.

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Nature of the Dispute: Customers vs. Member Firms

**REPRESENTATION OF PARTIES**

Kenneth J. Crawford, Cynthia A. Jesse, Patrick L. Crawford, Michael T. Crawford, Samuel J. Crawford, Elizabeth M. Fleming, Kathryn D. Schuh and Mary Ellen Tree, hereinafter collectively referred to as "Claimants": William J. French, Esq. and William Chaney, Esq., (formerly of Conant French & Chaney in Dallas, Texas) of Looper Reed & McGraw in Dallas, Texas, along with co-counsel, Len Levenson, Esq. of Kravitz Gass Hovel & Leitner, S.C. in Milwaukee, Wisconsin.

National Financial Services, LLC ("National Financial"), hereinafter referred to as "Respondent National Financial": Michael Shannon, Esq. of Brown, Raysman, Millstein, Felder & Steiner, LLP, located in New York, New York.

Securities America, Inc. ("Securities America"), hereinafter referred to as "Respondent Securities America": Sean Lanphier, Esq. of Michael Best & Friedrich, LLP, located in Milwaukee, Wisconsin. Securities America was then later represented by Peter Richardson, Esq. of Michael Best & Friedrich in Milwaukee, Wisconsin.

### CASE INFORMATION

Statement of Claim filed on or about: May 20, 2003

Claimants, Kenneth J. Crawford, Cynthia J. Jesse and Patrick L. Crawford, signed an undated Uniform Submission Agreement.

Claimant, Michael T. Crawford, signed the Uniform Submission Agreement: June 2, 2003

Claimant, Samuel J. Crawford, signed the Uniform Submission Agreement: June 4, 2003

Claimant, Elizabeth M. Fleming, signed the Uniform Submission Agreement: June 4, 2003

Claimant, Kathryn D. Schuh, signed the Uniform Submission Agreement: June 5, 2003

Claimant, Mary Ellen Tree, signed the Uniform Submission Agreement: June 4, 2003

Statement of Answer and Motion to Dismiss filed by National Financial on or about: August 4, 2003

National Financial signed the Uniform Submission Agreement: June 24, 2003

Claimants filed a Brief in Opposition to National Financial's Motion to Dismiss and in Support of Claimant's Motion for Partial Summary Judgment: October 9, 2003

National Financial filed a Reply to Claimants' Response to its Motion to Dismiss: February 6, 2004

Statement of Answer and Counterclaim filed by Respondent, Securities America, on or about: August 6, 2003

Securities America, signed the Uniform Submission Agreement on: June 30, 2003

Claimants filed an Answer to Securities America's Counterclaim on: November 4, 2003.

Claimants filed a Motion to Dismiss and Brief in Support for Lack of Jurisdiction: November 1, 2004

Claimants filed a Revised Motion to Dismiss and Brief in Support for Lack of Jurisdiction: November 10, 2004

Securities America, filed a Response to Claimants' Motion to Dismiss for Lack of Jurisdiction: December 8, 2004.

National Financial filed a Response to Claimants' Motion to Dismiss and Claimants' Cross-Motion for Partial Summary Judgment: March 26, 2004

### CASE SUMMARY

Claimants asserted the following causes of action: unauthorized trading, breach of fiduciary duty and violations of NASD rules. The causes of action relate to various securities, including Fidelity mutual funds such as: Fidelity Advisor Growth & Income; Fidelity Equity Growth Fund; Fidelity Advisor Technology Fund; Van Kampen Emerging Growth Fund; and Fidelity Advisor Mid Cap Fund. Claimants asserted that these transactions were unauthorized and unsuitable to their investment needs and objectives.

Unless specifically admitted in its Answer, Respondent, National Financial Services, LLC, denied the allegations made in the Statement of Claim and asserted various affirmative defenses:

1. The claim fails to set forth a basis for recovery from National Financial.
2. Claimant's claim against National Financial is barred because, as the clearing broker for Securities America, National Financial owed no fiduciary, supervisory or other such duties to Claimants.

3. Based upon the allegations of the Claim, all of Claimants' alleged losses arise solely from the allegedly wrongful activity of others as to which National Financial had no involvement or responsibility.
4. Upon information and belief, Claimants' alleged losses were proximately caused, in whole or in part, by their own conduct and/or negligence in relation to their accounts.
5. No private right of action lies for some of the claims alleged.
6. At all times National Financial did not know of the alleged misdeeds of its broker, William Chambers ("Chambers") and, in the exercise of reasonable diligence, could not have known.
7. Claimants have not alleged any basis for punitive damages as against National Financial.
8. With respect to some or all of the claims, there is no basis for an award of attorney's fees.
9. As stated by the Court in the Federal Action, under section 9.11 of the Trust Agreement, the co-trustees' signatures on the signature cards attached to the Account Agreements would operate to ratify the Account Agreements and bind the Grantor Retained Annuity Trusts Nos. 1, 2, 3, 4, 5 and 6 (the "GRAT Trusts") to their terms.
10. In light of the Federal Court determination, Claimants are estopped from asserting their claims against National Financial.
11. Some or all of Claimants' claims are barred by the statute of limitations.

Unless specifically admitted in its Answer, Respondent, Securities America, Inc. denied the allegations made in the Statement of Claim and asserted various affirmative defenses:

1. Any claim regarding the opening of the accounts for the GRAT Trusts is barred by the applicable statute of limitations including Section 10304 of the Code of Arbitration Procedure.
2. The Claimants claim that the 1994 account applications are invalid is barred by the doctrines of claim preclusion (*res judicata*) and issue preclusion (*collateral estoppel*).
3. The Co-Trustees are estopped from making any claims against Securities America because at all times, they were aware of the transactions in the GRAT Trusts and had full control of the Trust assets.
4. The Co-Trustees and beneficiaries have waived any claims they may have had against Securities America or Mr. Chambers. The Co-Trustees and beneficiaries had six (6) months to object to any account statement and if they failed to object, it stood "as an approval." None of the Co-Trustees or beneficiaries objected to the account statement showing the transactions in July of 2000 within six months.
5. At all times, the Co-Trustees knew of the transactions in July of 2000, acquiesced in those transactions and approved those transactions.
6. The Co-Trustees ratified the actions of Mr. Chambers. In particular, Co-Trustee Cynthia Jesse ratified the July 2000 transactions in her letter January 11, 2001.
7. The Claimants failed to mitigate their damages.
8. The Claimants failed to state any claim for securities fraud with particularity. Specifically, they have not specified any false statements that they supposedly relied on.
9. The Claimants have not alleged and cannot prove "loss causation." In particular, the Claimants' losses were caused by general market conditions, rather than any acts or omissions of Mr. Chambers or Securities America.
10. The Claimants' assertions under the Wisconsin Organized Crime Control Act are frivolous. To contend that Mr. Chambers or Securities America are "racketeers" or part of organized crime in Green Bay, Wisconsin is preposterous.
11. The GRAT Trust beneficiaries lack standing to pursue any claims.
12. At all times, Mr. Chambers acted in good faith.

### **RELIEF REQUESTED**

Claimants requested compensatory damages; pre and post-award interest; punitive damages; costs and attorney's fees; for a declaration that no valid agreement exists between Claimants and National Financial or Securities America; and for such other and further relief as is just and proper.

Respondent, National Financial, requested that all claims be dismissed with prejudice and costs be assessed against Claimants.

Respondent, Securities America, requested that all claims against it be dismissed, for costs and attorney's fees associated with the defense of the Federal Court action and this arbitration. Alternatively, if any damages are awarded against Securities America, it requests that the Co-Trustees be ordered to indemnify Securities America against any such damages, and for other relief that may be appropriate.

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

In an Order dated December 28, 2004, the Panel having reviewed and considered all pleadings filed on Claimant's Motion to Dismiss for lack of jurisdiction and Respondents' responses, the Panel determined that the motion would be taken under advisement pending conclusion of the final hearing.

During the hearing in March of 2005, the parties notified the Panel that Claimants settled their claims against National Financial Services, LLC.

### **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. Respondent, Securities America, is solely liable for and shall pay Claimants, Kenneth J. Crawford, Cynthia A. Jesse, Patrick L. Crawford, Michael T. Crawford, Samuel J. Crawford, Elizabeth M. Fleming, Kathryn D. Schuh and Mary Ellen Tree, the sum of \$177,200.00 as compensatory damages.
2. All motions not previously decided are denied.
3. Except as otherwise specified herein, the parties shall bear their own costs, including attorneys' fees.
4. Any and all relief not specifically addressed herein, including punitive damages, is 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	= \$ 250.00
Counter claim filing fee	= \$ 500.00

### **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 person at the time of the events giving rise to the dispute. Accordingly, National Financial Services, LLC and Securities America, Inc. are parties to this proceeding and are assessed the following:

Member surcharge	= \$ 1,500.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,200.00

### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

October 4-8, 2004, adjournment by parties to mediate with NASD	= \$ 1,000.00
	(waived by NASD)

### **Forum Fees and Assessments**

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

One (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: September 17, 2004 1 session	

Two (2) Pre-hearing sessions with Panel @ \$1,000.00	= \$ 2,000.00
Pre-hearing conferences: February 13, 2004 1 session	
April 8, 2004 1 session	

Twenty-Six (26) Hearing sessions @ \$1,000.00	= \$26,000.00
Hearing Dates:	
March 21, 2005	2 sessions
March 22, 2005	2 sessions
March 23, 2005	2 sessions
March 24, 2005	2 sessions
March 25, 2005	2 sessions
June 6, 2005	2 sessions
June 7, 2005	2 sessions
June 8, 2005	2 sessions
June 9, 2005	2 sessions
June 10, 2005	2 sessions
December 5, 2005	2 sessions
December 6, 2005	2 sessions
December 7, 2005	2 sessions

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Total Forum Fees	= \$28,450.00
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The Panel has assessed 100% of the total forum fees in the amount of \$28,450.00 solely to Respondent, Securities America, Inc.

### FEE SUMMARY

1. Claimants, Kenneth J. Crawford, Cynthia A. Jesse, Patrick L. Crawford, Michael T. Crawford, Samuel J. Crawford, Elizabeth M. Fleming, Kathryn D. Schuh and Mary Ellen Tree, are jointly and severally liable for:

Initial Filing Fee	= \$ 250.00
<u>Less payments</u>	<u>= \$ 1,000.00</u>
Refund Due from NASD Dispute Resolution	= \$ 1,000.00

2. Respondent, National Financial Services, LLC, is solely liable for:

Member Fees	= \$ 4,450.00
<u>Less payments</u>	<u>= \$ 4,450.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondent, Securities America, Inc., is solely liable for:

Counterclaim Filing Fee	= \$ 500.00
Member Fees	= \$ 4,450.00
<u>Forum Fees</u>	<u>= \$28,450.00</u>
<u>Total Fees</u>	<u>= \$33,400.00</u>
<u>Less payments</u>	<u>= \$ 4,450.00</u>
Balance Due NASD Dispute Resolution	= \$28,950.00

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

### ARBITRATION PANEL

Terry F. Peppard, Esq.	-	Public Arbitrator, Presiding Chairperson
Emanuel V. Gumina, Esq.	-	Public Arbitrator
Susan H. Schleisner	-	Non-Public Arbitrator

### Concurring Arbitrators' Signatures

/s/ Terry F. Peppard, Esq.  
Terry F. Peppard, Esq.  
Public Arbitrator, Presiding Chairperson

12/9/05  
Signature Date

/s/ Emanuel V. Gumina, Esq.  
Emanuel V. Gumina, Esq.  
Public Arbitrator

12/12/05  
Signature Date

/s/ Susan H. Schleisner  
Susan H. Schleisner  
Non-Public Arbitrator

12/27/05  
Signature Date

12/12/05  
Date of Service (For NASD Dispute Resolution use only)

NASD Dispute Resolution  
 Arbitration No. 03-03667  
Award Page 6 of 7

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