

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

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In the Matter of the Arbitration Between:

Victor J. Closi and Phyllis A. Closi JT TEN, Victor J. Closi IRA, Phyllis A. Closi IRA, and Victor J. Closi Annuity (Claimants) v. Bernard McGee, Bernard McGee d/b/a McGee Financial Services; McGee Financial Services; Royal Alliance Associates, Inc.; Royal Alliance, a Sunamerica Company; and Sunamerica Trust, Inc. (Respondents)

Case Number: 03-04316

Hearing Site: New York, New York

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Nature of the Dispute: Customers v. Member, Non-Members, and Associated Person.

**REPRESENTATION OF PARTIES**

Claimants Victor J. Closi and Phyllis A. Closi JT TEN ("V. and P. Closi JT TEN"), Victor J. Closi IRA ("V. Closi IRA"), Phyllis A. Closi IRA ("P. Closi IRA"), and Victor J. Closi Annuity ("V. Closi Annuity") hereinafter collectively referred to as "Claimants": Christopher G. Brown, Esq., Begos & Horgan, LLP, Westport, CT.

Respondent Royal Alliance Associates, Inc. ("Royal Alliance"): Gladys Xiques, Esq., Luboja & Thau, LLP, New York, NY.

Respondent Bernard McGee ("B. McGee"), Bernard McGee d/b/a McGee Financial Services ("B. McGee d/b/a McGee Financial Services") and McGee Financial Services ("McGee Financial Services"): Thomas F. O'Brien, Esq., Law Offices of Thomas F. O'Brien, Clinton, NY.

Royal Alliance, a Sunamerica Company did not make an appearance in this matter.

Sunamerica Trust, Inc. did not make an appearance in this matter.

Royal Alliance, B. McGee, B. McGee d/b/a McGee Financial Services, McGee Financial Services, Royal Alliance, a Sunamerica Company, and Sunamerica Trust, Inc. are hereinafter collectively referred to as "Respondents".

**CASE INFORMATION**

Statement of Claim filed on or about: June 10, 2003.

Claimants signed the Uniform Submission Agreement: May 7, 2003.

Statement of Answer filed by Respondent Royal Alliance on or about: October 6, 2003.

Respondent Royal Alliance signed the Uniform Submission Agreement: October 6,

2003.

Joint Statement of Answer filed by Respondents B. McGee, B. McGee d/b/a McGee Financial Services, and McGee Financial Services on or about: October 6, 2003.

B. McGee signed the Uniform Submission Agreement: October 6, 2003.

Respondent B. McGee d/b/a McGee Financial Services did not sign the Uniform Submission Agreement.

Respondent McGee Financial Services did not sign the Uniform Submission Agreement.

### **CASE SUMMARY**

Claimants asserted the following causes of action: violations of sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and rules of the Securities Exchange Commission; violations of the NYSE rules, NASD rules, and other applicable organizations; violations of Article 22-A of the New York General Business Law; breach of fiduciary duty; common law fraud; negligence; unauthorized trading; and breach of contract. Claimants' claims involved American Skandia Advisors Plan, a variable annuity; common stock; and various mutual funds.

Unless specifically admitted in its Answer, Respondent Royal Alliance denied the allegations made in the Statement of Claim.

Respondents B. McGee, B. McGee d/b/a McGee Financial Services, and McGee Financial Services denied the allegations made in the Statement of Claim.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$365,000.00, plus interest, costs, and attorneys' fees pursuant to Article 22-A of the New York General Business Law; and punitive damages in the amount of \$730,000.00; and other relief the Panel deems appropriate.

Respondent Royal Alliance requested that the Panel dismiss Claimants' claim in its entirety.

Respondents B. McGee, B. McGee d/b/a McGee Financial Services, and McGee Financial Services requested that the Panel dismiss Claimants' claim in its entirety.

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

Respondents B. McGee and McGee Financial Services did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and, having answered the claim, and appeared

and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

Respondents Royal Alliance, a Sunamerica Company, and Sunamerica Trust, Inc. are not NASD members and, therefore, were not required to arbitrate in this forum and did not submit to NASD Dispute Resolution's jurisdiction.

Respondent Royal Alliance settled with the Claimants prior to the first hearing scheduled to begin on July 27, 2004.

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, and 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. Claimants' claims are denied in their entirety.
2. 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	= \$500.00
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#### **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, Royal Alliance Associates, Inc. is a party.

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,000.00

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the 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 Panel @ \$1,200.00	= \$1,200.00
Pre-hearing conference: January 12, 2004 1 session	
Six (6) Hearing sessions @ \$1,200.00	= \$7,200.00
Hearing Dates: July 27, 2004 2 sessions	
July 28, 2004 2 sessions	
July 29, 2004 2 sessions	
Total Forum Fees	= \$8,400.00

1. The Panel has assessed \$8,400.00 of the forum fees jointly and severally against Claimants.

**Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
<u>Forum Fees</u>	= \$8,400.00
Total Fees	= \$8,900.00
<u>Less payments</u>	= \$1,700.00
Balance Due NASD Dispute Resolution	= \$7,200.00
2. Respondent Royal Alliance is solely liable for:

<u>Member Fees</u>	= \$8,550.00
Total Fees	= \$8,550.00
<u>Less payments</u>	= \$8,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

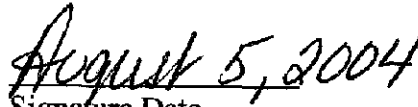
**ARBITRATION PANEL**

Pamela H. Roderick	-	Public Arbitrator, Presiding Chairperson
Lawrence A. Siegel	-	Public Arbitrator
Clifford A. Harwick	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument in which is my award.

  
Pamela H. Roderick  
Public Arbitrator, Presiding Chairperson

  
Signature Date

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Lawrence A. Siegel  
Public Arbitrator

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

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Clifford A. Harwick  
Non-Public Arbitrator

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Signature Date

August 13, 2004  
Date of Service (For NASD Dispute Resolution use only)

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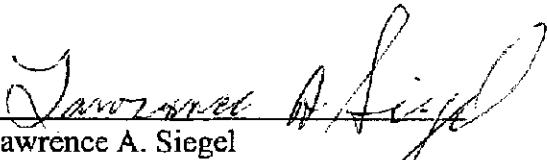
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Signature Date

  
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Lawrence A. Siegel  
Public Arbitrator

AUG. 4, 04  
\_\_\_\_\_  
Signature Date

*Jane L. Lord* Notary Public #53703

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Clifford A. Harwick  
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