

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

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In the Matter of the Arbitration Between:

James W. Byrd and Virginia S. Byrd, as Trustees of the James W. and Virginia S. Byrd Revocable Living Trust, Claimants v. Anthony L. Jennings and Locust Street Securities, Inc., Respondents

Case Number: 03-04671

Hearing Site: Las Vegas, Nevada

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Nature of the Dispute: Customers v. Member and Associated Person

**REPRESENTATION OF PARTIES**

For Claimants:

David Liebrader, Esq.  
Law Office of David  
Liebrader, APC  
Las Vegas, Nevada

For Respondent Anthony L. Jennings:

Harold P. Gewerter, Esq.  
Law Offices of Harold P.  
Gewerter, Esq., Ltd.  
Las Vegas, Nevada

For Respondent Locust Street Securities, Inc.:

Bill Nelson, Esq.  
Rothberger Johnson & Lyons  
LLP  
Denver, Colorado

**CASE INFORMATION**

Statement of Claim filed: June 23, 2003

Claimants' Joint Uniform Submission Agreement signed but not dated

Statement of Answer filed by Respondent Anthony L. Jennings: September 19, 2003

Respondent Anthony L. Jennings' Uniform Submission Agreement signed: September 12, 2003

Statement of Answer filed by Respondent Locust Street Securities, Inc.: September 19, 2003

Respondent Locust Street Securities, Inc.'s Uniform Submission Agreement signed: August 4, 2003

### **CASE SUMMARY**

Claimants alleged breach of fiduciary duty, fraud, misrepresentation, negligence, violation of Nevada Revised Statutes sections 90.570, 90.660 (material omissions and misrepresentations), 90.460 (violation of registration requirement), and 598.092 (deceptive trade practices), control person liability, respondeat superior, and agency liability. Claimants' allegations involved variable annuities that were issued by ING and Nationwide and the purchase of shares of Alpha Telecom.

Respondent Locust Street Securities, Inc. denied the allegations of wrongdoing set forth in Claimants' Statement of Claim and asserted various affirmative defenses.

Respondent Anthony L. Jennings denied the allegations of wrongdoing set forth in Claimants' Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested \$156,624.00 in compensatory damages, unspecified consequential damages, unspecified punitive and exemplary damages, lost opportunity costs, disgorgement and restitution of earnings, profits, compensation and benefits received by Respondents, pre- and post-judgment interest and costs, including attorney's fees.

Respondent Locust Street Securities, Inc. requested dismissal of Claimants' Statement of Claim in its entirety, forum fees and costs, including attorney's fees.

Respondent Anthony L. Jennings requested dismissal of Claimants' Statement of Claim in its entirety, expungement of this matter from Respondent Anthony L. Jennings' CRD records, and costs.

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

Claimants and Respondent Locust Street Securities, Inc. entered into a confidential settlement agreement prior to the evidentiary hearing in this matter. Accordingly, this Award addresses and adjudicates only the issues in dispute between Claimants and Respondent Anthony L. Jennings.

The parties 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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent Anthony L. Jennings is liable to and shall pay Claimants James W. Byrd and Virginia S. Byrd, as Trustees of the James W. and Virginia S. Byrd Revocable Living Trust, the sum of \$50,600.00 in compensatory damages.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) All other relief requested and not expressly granted is denied.

**FEES**

Pursuant to the Code, the following fees are assessed:

**Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 300.00
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**Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Locust Street Securities, Inc. is a party, and the following fees are assessed:

Member Surcharge	= \$1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$2,750.00</u>
<b>Total Member Fees</b>	<b>= \$5,200.00</b>

**Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

One (1) pre-hearing conference session with a single arbitrator @ \$ 450.00/session	= \$ 450.00
Pre-hearing conference: July 9, 2004 1 session	

One (1) pre-hearing conference session with the Panel @ \$1,125.00/session	= \$1,125.00
Pre-hearing conference: December 12, 2003 1 session	

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Four (4) hearing sessions @ \$1,125.00/session = \$4,500.00

Hearings: September 14, 2004 2 sessions

September 15, 2004 2 sessions

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**Total Forum Fees = \$6,075.00**

1. The Panel assessed \$3,037.50 of the forum fees jointly and severally to Claimants James W. Byrd and Virginia S. Byrd, as Trustees of the James W. and Virginia S. Byrd Revocable Living Trust.
2. The Panel assessed \$2,756.25 of the forum fees to Respondent Anthony L. Jennings.
3. The Panel assessed \$281.25 of the forum fees to Respondent Locust Street Securities, Inc.

**Fee Summary**

1. Claimants James W. Byrd and Virginia S. Byrd, as Trustees of the James W. and Virginia S. Byrd Revocable Living Trust are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$ 3,037.50</u>
Total Fees	= \$ 3,337.50
<u>Less payments</u>	<u>= \$(1,425.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 1,912.50</b>

2. Respondent Locust Street Securities, Inc. is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	<u>= \$ 281.25</u>
Total Fees	= \$ 5,481.25
<u>Less payments</u>	<u>= \$(5,200.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 281.25</b>

3. Respondent Anthony L. Jennings is charged with the following fees and costs:

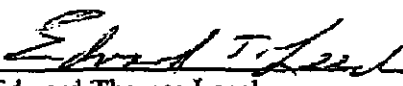
<u>Forum Fees</u>	<u>= \$ 2,756.25</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 2,756.25</b>

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

**ARBITRATION PANEL**

<i>Edward Thomas Leech</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Philip H. Marmurowski</i>	-	<i>Public Arbitrator</i>
<i>Harvey M. Hudgins</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
Edward Thomas Leech  
Chair, Public Arbitrator

9-22-04  
Signature Date

\_\_\_\_\_  
Philip H. Marmurowski  
Public Arbitrator

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

\_\_\_\_\_  
Harvey M. Hudgins  
Non-Public Arbitrator

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

9/23/04  
Date of Service

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9/23/04  
Date of Service