

**STIPULATED AWARD  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimants

Brian E. Buyack, Raul A. Chavez, Robert D. Cline, Joseph E. Kappes  
Richard Pew, Paul W. Carbajal, Gary L. Gallagher, Robert P. Hunt,  
Keith B. Smith, Daniel Broadley, Craig Riggs, Michael Dubois,  
Gilbert Damiani, Robert W. Miller, Scott M. Koch, Donald E. Biggs,  
Tyrone E. Perkins, John Gomez, Richard Castellano, William A.  
Hayes, Christopher Larsen, Gumecindo Arciniega, David S. Hackitt,  
Brian Kotsur, Rick L. Hoover, John C. Shindledecker, Arnold  
Cornejo, Kevin J. Maschue, Stephen Wood, Joseph Quintanares, Dale  
Miller, Leonard M. Vargas, Robert G. Horn, Harold M. Stout, Dallas  
Brown, Michael R. Powers, Patrick Nahass, and David Millet

and

03-05191 (Consolidated  
with Case Nos.: 03-5194,  
03-5195, 03-5196, 03-  
5240, 03-5519, 03-5749)  
Phoenix, Arizona

Name of Respondents

Aetna Financial Services, Inc.; Aetna Life Insurance and Annuity Co.;  
ING Financial Advisors, LLC, a/k/a Aetna Investment Services, Inc.,  
a/k/a Aetna Investment Services, LLC, a/k/a Aetna Financial Advisors,  
LLC; Charles A. Sklader and Keith William Jones

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Nature of the Dispute: Customers vs. Member, Terminated Members and Associated Persons

**REPRESENTATION OF PARTIES**

Brian E. Buyack, Raul A. Chavez, Robert D. Cline, Joseph E. Kappes Richard Pew, Paul W. Carbajal, Gary L. Gallagher, Robert P. Hunt, Keith B. Smith, Daniel Broadley, Craig Riggs, Michael Dubois, Gilbert Damiani, Robert W. Miller, Scott M. Koch, Donald E. Biggs, Tyrone E. Perkins, John Gomez, Richard Castellano, William A. Hayes, Christopher Larsen, Gumecindo Arciniega, David S. Hackitt, Brian Kotsur, Rick L. Hoover, John C. Shindledecker, Arnold Cornejo, Kevin J. Maschue, Stephen Wood, Joseph Quintanares, Dale Miller, Leonard M. Vargas, Robert G. Horn, Harold M. Stout, Dallas Brown, Michael R. Powers, Patrick Nahass, and David Millet ("Claimants") were represented by Raymond M. Hunter, Esq., Galbut & Hunter, P.C., Phoenix, Arizona.

Aetna Financial Services, Inc.; Aetna Life Insurance and Annuity Co.; ING Financial Advisors, LLC, a/k/a Aetna Investment Services, Inc., a/k/a Aetna Investment Services, LLC, a/k/a Aetna Financial Advisors, LLC and Charles A. Sklader ("**Respondents Aetna/ING**") were represented by Jesse B. Simpson, Esq. and Edwin A. Barkel, Esq., Lewis and Roca, LLP, Phoenix, Arizona.

Keith William Jones ("**Respondent Jones**") was represented by Janet Weinstein, Esq. and James D. Burgess, Esq., Fennemore Craig, Phoenix, Arizona.

### CASE INFORMATION

The Statement of Claim in matter 03-05191 was filed on or about July 16, 2003. Submission Agreement of Claimant Harold Stout was signed on July 11, 2003. Submission Agreement of Claimant Michael Powers was signed on July 14, 2003. Submission Agreement of Claimant Patrick Nahass was signed on July 12, 2003. Submission Agreement of Claimant David Millett was signed on July 14, 2003. Submission Agreement of Claimant Dallas Brown was signed on July 11, 2003.

The Statement of Claim in matter 03-05194 was filed on or about July 16, 2003. Submission Agreement of Claimant Paul W. Carbajal was signed on July 11, 2003. Submission Agreement of Claimant Gary L. Gallagher was signed on July 14, 2003. Submission Agreement of Claimant Robert P. Hunt was signed on July 11, 2003. Submission Agreement of Claimant Keith B. Smith was signed on July 14, 2003. Submission Agreement of Claimant Daniel Broadley was signed on July 14, 2003. Submission Agreement of Claimant Craig Riggs was signed on July 18, 2003.

The Statement of Claim in matter 03-05195 was filed on or about July 16, 2003. Submission Agreement of Claimant Arnold Cornejo was signed on July 11, 2003. Submission Agreement of Claimant Rick L. Hoover was signed on July 11, 2003. Submission Agreement of Claimant John C. Shindlecker was signed on July 14, 2003. Submission Agreement of Claimant Stephen Wood was signed on July 14, 2003. Submission Agreement of Claimant Kevin J. Maschue was signed on July 16, 2003.

The Statement of Claim in matter 03-05196 was filed on or about July 16, 2003. Submission Agreement of Claimant Michael Dubois was signed on July 11, 2003. Submission Agreement of Claimant Gilbert Damiani was signed on July 14, 2003. Submission Agreement of Claimant Robert W. Miller was signed on July 14, 2003. Submission Agreement of Claimant Scott M. Koch was signed on July 16, 2003. Submission Agreement of Claimant Donald E. Biggs was signed on July 10, 2003. Submission Agreement of Claimant Tyrone E. Perkins was signed on July 14, 2003.

The Statement of Claim in matter 03-05240 was filed on or about July 18, 2003. Submission Agreement of Claimant John Gomez was signed on July 16, 2003. Submission Agreement of Claimant Richard Castellano was signed on July 15, 2003. Submission Agreement of Claimant William A. Hayes was signed on July 15, 2003. Submission Agreement of Claimant Gumecindo

Arciniega was signed on July 14, 2003. Submission Agreement of Claimant Christopher Larsen was signed on July 17, 2003. Submission Agreement of Claimant David S. Hackitt was signed on July 29, 2003. Submission Agreement of Claimant Brian Kotsur was signed on July 14, 2003.

The Statement of Claim in matter 03-05519 was filed on or about July 28, 2003. Submission Agreement of Claimant Brian E. Buyack was signed on July 15, 2003. Submission Agreement of Claimant Raul A. Chavez was signed on July 14, 2003. Submission Agreement of Claimant Robert D. Cline was signed on July 14, 2003. Submission Agreement of Claimant Joseph E. Kappes was signed on July 10, 2003. Submission Agreement of Claimant Richard Pew was signed on July 11, 2003.

The Statement of Claim in matter 03-05749 was filed on or about August 6, 2003. Submission Agreement of Claimant Joseph Quintanares was signed on July 23, 2003. Submission Agreement of Claimant Dale Miller was signed on August 5, 2003. Submission Agreement of Claimant Leonard M. Vargas was signed on July 29, 2003. Submission Agreement of Claimant Robert G. Horn was signed on August 1, 2003.

Omnibus Response to Statements of Claim was filed by Respondents Aetna Financial Services, Inc.; Aetna Life Insurance and Annuity Co.; ING Financial Advisors, LLC, a/k/a Aetna Investment Services, Inc., a/k/a Aetna Investment Services, LLC, a/k/a Aetna Financial Advisors, LLC and Charles A. Sklader on or about November 17, 2003. Submission Agreement of Respondent ING Financial Advisors, LLC was signed on December 8, 2003. Submission Agreement of Respondent Charles A. Sklader was signed on December 10, 2003.

Consolidated Answer of Keith Jones to Claimants' Statements of Claim and Joinder in the Response of Co-Respondents Aetna/ING and Charles Sklader was filed on November 4, 2003.

Motion to Amend Statement of Claim and Amended Statement of Claim were filed on September 28, 2004.

Aetna's Response and Objections to Claimants' Amended Statement of Claim was filed on October 25, 2004.

### **CASE SUMMARY**

Claimants asserted claims against Aetna/ING, Sklader and Jones for alleged breach of fiduciary duty, professional negligence, negligent misrepresentation, fraud and violations of Arizona's securities statutes in connection with Claimants' 457 Plan investments. Claimants also asserted claims against Aetna/ING and Sklader for alleged negligent supervision.

The parties stipulated as follows:

- Claimants are participants in a deferred compensation plan that the City of Mesa established for its employees pursuant to Section 457 of the Internal Revenue Code ("the 457 Plan").
- Respondent ING Life Insurance and Annuity Company ("ING") is, and at all times relevant to the Arbitration, was a provider selected by the City of Mesa for the 457 Plan.
- Jones is a registered representative of ING Financial Advisers, LLC and ING Life Insurance and Annuity Company. Jones served as one of several ING account representatives for the 457 plan group annuity contract purchased by the City of Mesa for its employees, specifically from July 1999 through July 2001.
- Sklader was a registered representative of ING Financial Advisers, LLC and ING Life Insurance and Annuity Company. Sklader was a registered principal, and he was Jones' supervisor.
- Claimants invested in a number of the variable annuity mutual fund subaccounts offered in the Mesa 457 Plan ING group annuity contract, including the Janus Aspen Growth Fund, the Janus Aspen Aggressive Fund, the Janus Aspen Worldwide Growth Fund, and the Fidelity VIP Growth Fund.

Respondents denied the allegations set forth in the Statements of Claim. Respondents also asserted a number of affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested an award of unspecified compensatory and punitive damages.

Respondents 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 Keith William Jones did not file with the NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim is bound by the determination of the arbitration panel on all issues submitted.

Claimants and Respondents through their respective counsel stipulated to the dismissal without prejudice of Jones on August 25, 2004 and Sklader on August 27, 2004.

By letter dated November 8, 2004, the parties were advised of the Arbitration Panel's decision as follows:

NASD Dispute Resolution

Arbitration No. 03-05191 (Consolidated with Case Nos.: 03-5194, 03-5195, 03-5196, 03-5240, 03-5519, 03-5749)

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The arbitration panel conferred telephonically this morning regarding the claimants' motion for leave to amend their statement of claim in the above referenced case, and we unanimously decided to permit all of the claimants' proposed amendments except for the addition of a new claim for breach of contract (section F at paragraphs 109-112 at pages 38-39 of the proposed amended statement of claim).

Claimants and Aetna/ING have resolved their remaining disputes and stipulate, hereby agree and request that each and every claim that Claimants assert against Aetna/ING, Sklader and Jones be dismissed from the Arbitration with prejudice.

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 original(s) remain on file with the NASD Dispute Resolution (the "NASD").

**AWARD**

After considering the pleadings and the stipulation of the parties, but without making any findings of fact or conclusions of law, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination and find as follows:

1. Each and every claim that Claimants assert against Aetna/ING, Respondent Charles A. Sklader and Respondent Keith William Jones in NASD Case Nos.: 03-05191, 03-5194, 03-5195, 03-5196, 03-5240, 03-5519, and 03-5749 (Consolidated) is hereby dismissed with prejudice. This dismissal is binding on the Claimants and their respective marital communities who have an interest in the claims.
2. The Panel recommends the expungement of all information concerning Claimants' customer disputes with Aetna Financial Services, Inc.; Aetna Life Insurance and Annuity Co.; ING Financial Advisors, LLC, a/k/a Aetna Investment Services, Inc., a/k/a Aetna Investment Services, LLC, a/k/a Aetna Financial Advisors, LLC, Charles Andrew Sklader (CRD No. 2024954) and Respondent Keith William Jones (CRD No. 2956895), including but not limited to each and every allegation Claimants asserted against the aforementioned entities, Sklader or Jones in NASD Case Nos.: 03-05191, 03-5194, 03-5195, 03-5196, 03-5240, 03-5519, and 03-5749 (Consolidated), from Respondent Charles A. Sklader's and Respondent Keith William Jones's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondents Charles A. Sklader and Keith William Jones must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

3. That 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.
4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees, not specifically awarded or otherwise provided for above.

### **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 03-05191	= \$250.00
Initial claim filing fee 03-05194	= \$250.00
Initial claim filing fee 03-05195	= \$250.00
Initial claim filing fee 03-05196	= \$250.00
Initial claim filing fee 03-5240	= \$250.00
Initial claim filing fee 03-5529	= \$250.00
Initial claim filing fee 03-05749	= \$250.00
Total claim filing fees	\$1,750.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is ING Financial Advisors, LLC, a/k/a Aetna Investment Services, Inc., a/k/a Aetna Investment Services, LLC, a/k/a Aetna Financial Advisors, LLC.

03-05191	
Member surcharge	\$ 1,500.00
Pre-hearing process fee	\$ 750.00
Hearing process fee	\$ 2,200.00
Total Member Fees	\$ 4,450.00
03-05194	
Member surcharge	\$ 1,500.00
Pre-hearing process fee	\$ 750.00

	Total Member Fees	\$	2,250.00
03-05195			
Member surcharge		\$	1,500.00
Pre-hearing process fee		\$	750.00
	Total Member Fees	\$	2,250.00
03-05196			
Member surcharge		\$	1,500.00
Pre-hearing process fee		\$	750.00
	Total Member Fees	\$	2,250.00
03-05240			
Member surcharge		\$	1,500.00
Pre-hearing process fee		\$	750.00
	Total Member Fees	\$	2,250.00
03-05519			
Member surcharge		\$	1,500.00
Pre-hearing process fee		\$	750.00
	Total Member Fees	\$	2,250.00
03-05749			
Member surcharge		\$	1,500.00
	Total Member Fees	\$	1,500.00

#### 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:

1	Pre-hearing session(s) with Panel	x	1,000.00	\$	1,000.00
	February 20, 2004	1	session		
	Total Forum Fees			\$	1,000.00

The Arbitration Panel has assessed \$500.00 of the forum fees jointly and severally to Brian E. Buyack, Raul A. Chavez, Robert D. Cline, Joseph E. Kappes Richard Pew, Paul W. Carbajal, Gary L. Gallagher, Robert P. Hunt, Keith B. Smith, Daniel Broadley, Craig Riggs, Michael Dubois, Gilbert Damiani, Robert W. Miller, Scott M. Koch, Donald E. Biggs, Tyrone E. Perkins, John Gomez, Richard Castellano, William A. Hayes, Christopher Larsen, Gumecindo Arciniega, David S. Hackitt, Brian Kotsur, Rick L. Hoover, John C. Shindlecker, Arnold Cornejo, Kevin J. Maschue, Stephen Wood, Joseph Quintanares, Dale Miller, Leonard M. Vargas, Robert G. Horn, Harold M. Stout, Dallas Brown, Michael R. Powers, Patrick Nahass, and David Millet.

The Arbitration Panel has assessed \$500.00 of the forum fees jointly and severally to Respondents Aetna Financial Services, Inc.; Aetna Life Insurance and Annuity Co.; ING Financial Advisors, LLC, a/k/a Aetna Investment Services, Inc., a/k/a Aetna Investment Services, LLC, a/k/a Aetna Financial Advisors, LLC, Charles A. Sklader and Keith William Jones.

**Fee Summary**

Claimants, Brian E. Buyack, Raul A. Chavez, Robert D. Cline, Joseph E. Kappes, Richard Pew, Paul W. Carbajal, Gary L. Gallagher, Robert P. Hunt, Keith B. Smith, Daniel Broadley, Craig Riggs, Michael Dubois, Gilbert Damiani, Robert W. Miller, Scott M. Koch, Donald E. Biggs, Tyrone E. Perkins, John Gomez, Richard Castellano, William A. Hayes, Christopher Larsen, Gumecindo Arciniega, David S. Hackitt, Brian Kotsur, Rick L. Hoover, John C. Shindledecker, Arnold Cornejo, Kevin J. Maschue, Stephen Wood, Joseph Quintanares, Dale Miller, Leonard M. Vargas, Robert G. Horn, Harold M. Stout, Dallas Brown, Michael R. Powers, Patrick Nahass, and David Millet shall be and hereby are jointly and severally liable for:

Initial Filing Fees	= \$	1,750.00
<u>Forum Fees</u>	= \$	500.00
Total Fees	= \$	2,250.00
<u>Less payments</u>	= \$	-8,750.00
Balance to be refunded by NASD Dispute Resolution	= \$	-6,500.00

Respondent, ING Financial Advisors, LLC, a/k/a Aetna Investment Services, Inc., a/k/a Aetna Investment Services, LLC, a/k/a Aetna Financial Advisors, LLC, shall be and hereby is liable for:

Member Fees	= \$	17,950.00
Total Fees	= \$	17,950.00
<u>Less payments</u>	= \$	-17,950.00
Balance Due NASD Dispute Resolution	= \$	0.00

Respondents, Aetna Financial Services, Inc.; Aetna Life Insurance and Annuity Co.; ING Financial Advisors, LLC, a/k/a Aetna Investment Services, Inc., a/k/a Aetna Investment Services, LLC, a/k/a Aetna Financial Advisors, LLC, Charles A. Sklader and Keith William Jones, shall be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$	500.00
Total Fees	= \$	500.00
<u>Less payments</u>	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	500.00



NASD Dispute Resolution  
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03-5195, 03-5196, 03-5240, 03-5519, 03-5749)  
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**All balances are due to NASD Dispute Resolution**

**ARBITRATION PANEL**

Katherine M. Harmeyer, Esq. - Public Arbitrator, Presiding Chair  
Leon G. Mackey - Non-Public Arbitrator  
Marvin J. Klein - Non-Public Arbitrator

Concurring Arbitrators:

Katherine M. Harmeyer  
Katherine M. Harmeyer, Esq.  
Public Arbitrator, Presiding Chair

December 14, 2004  
Signature Date

Leon G. Mackey  
Leon G. Mackey  
Non-Public Arbitrator

Signature Date

Marvin J. Klein  
Marvin J. Klein  
Non-Public Arbitrator

Signature Date

12/29/04  
Date of Service (For NASD office use only)

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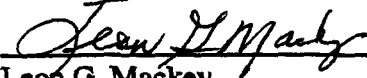
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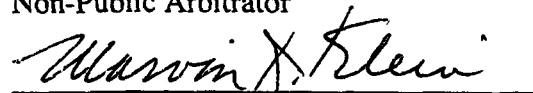
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Concurring Arbitrators:

/s/ Katherine M. Harmeyer  
Katherine M. Harmeyer, Esq.  
Public Arbitrator, Presiding Chair

December 14, 2004  
Signature Date

/s/ Leon G. Mackey  
Leon G. Mackey  
Non-Public Arbitrator

December 15, 2004  
Signature Date

/s/ Marvin J. Klein  
Marvin J. Klein  
Non-Public Arbitrator

December 20, 2004  
Signature Date

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Date of Service (For NASD office use only)