

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

In the Matter of the Arbitration Between:	)	
Edward F. Devine, Helen Devine,	)	
Edward F. Devine and Helen Devine,	)	<u>Case Number:</u> - 03-06133
Trustees of the Devine Revocable Trust,	)	
Claimants,	)	<u>Hearing Site:</u> St. Louis, Missouri
v.	)	
	)	
Royal Alliance Associates, Inc.	)	
Pines Financial Group, Inc. and	)	
Salvatore M. Culella,	)	
Respondents.	)	

## NATURE OF THE DISPUTE

Customer vs. Member Firm, Associated Person and Non-Member Firm

## REPRESENTATION OF PARTIES

Claimants, Edward F. Devine, Helen Devine, Individually and as Trustees of the Devine Revocable Trust ("Devine"), hereinafter collectively referred to as "Claimants": J. Christopher Wehrle, Esq. of Goldberg Wehrle, LLC, located in St. Louis, Missouri.

Respondents, Royal Alliance Associates, Inc. ("Royal Alliance"), Pines Financial Group, Inc. ("Pines") and Salvatore M. Culella ("Culella"), hereinafter collectively referred to as "Respondents": Martin Q. Ryan, Esq. of Bora, Baugh, Waitzman & Unger, LLC, located in Chicago, Illinois.

### CASE INFORMATION

Statement of Claim filed on or about: August 25, 2003.

Claimants Devine signed the Uniform Submission Agreement: June 10, 2003.

Statement of Answer and Motion to Dismiss filed by Respondents Royal Alliance, Pines and Culella, on or about: November 25, 2003.

**Respondent Royal Alliance signed the Uniform Submission Agreement: March 2, 2004**

Respondents Pines and Culella did not submit a signed the Uniform Submission Agreement.

## CASE SUMMARY

Claimants asserted the following causes of action: unsuitable investments (violation of NASD Rule 2310), failure to supervise, and negligence/negligent misrepresentation. The claims arose from Claimant's purchase of three variable annuities issued by Nationwide Life Insurance Company in or about May 2000.

Unless specifically admitted in its Answer, Respondents Royal Alliance, Pines and Culella denied the material allegations in the Statement of Claim and asserted that all recommendations and investments at issue were suitable and consistent with Claimants' investment objectives, wealth and financial status, sophistication and risk tolerance; that Respondents, at all times, acted in good faith and complied with all industry standards and duties; that Respondents still owned the investments at issues and ratified the investments at issue; and that Respondents did

not cause any of the losses claimed.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$500,000.00, unspecified punitive damages, interest, costs and fees.

Respondents Royal Alliance, Pines and Culella, requested that the claims asserted be denied and dismissed in their entirety; that Claimants be assessed with all fees and costs; and that an Award be entered recommending an expungement of all references to Claimants and the arbitration proceeding from the registration records of Respondent Salvatore M. Culella.

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

Respondent, Pines Financial Group, Inc. did not file with NASD Dispute Resolution a properly executed submission to arbitration, and it is not an NASD member firm. However, having answered the claim and appeared in this matter, Pines is bound by the determination of the Panel on all issues submitted.

Respondent, Salvatore M. Culella, did not file with NASD Dispute Resolution, a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and, having answered the claim and appeared in this matter, is bound by the determination of the Panel on all issues submitted.

A pre-hearing conference was held on August 11, 2004 before the Panel on Respondents' Motion to Dismiss. Having reviewed the pleadings submitted by the parties and arguments heard on August 11, 2004, the Panel denied Respondents' motion.

On or about October 14, 2004, Claimants dismissed all claims against Salvatore M. Culella and Pines Financial Group, Inc. with prejudice prior to hearing. Thereafter, Claimant informed NASD Dispute Resolution that the remaining claims had been fully settled, resolved and compromised. The parties filed a Stipulation and Notice of Dismissal with NASD Dispute Resolution, which requested that the Panel enter an Order and/or award expunging any references to Claimants, the claims and this proceeding from the registration records of Salvatore M. Culella, which are maintained by the NASD Central Registration Depository ("CRD").

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 parties' submissions and representations, but without making any findings of fact or conclusions of law, the undersigned arbitrators order as follows:

- 1.) Any and all claims against Royal Alliance Associates, Inc. Pine Financial Group, Inc. and Salvatore M. Culella are hereby dismissed with prejudice.
- 2.) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Salvatore M. Culella's registration records maintained by the NASD Central Registration Depository ("CRD"),

with the understanding that pursuant to NASD Notices to Members 99-90 and 99-54, Respondent Culella must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

- 3.) All parties shall bear their respective costs, including any attorney's fees and costs.
- 4.) Any and all relief not specifically addressed herein, including punitive damages is hereby denied with prejudice.

### **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 = \$ 300.00

#### **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. In this matter, Royal Alliance Associates, inc. is a party and is assessed the following fees:

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

#### **Forum Fees and Assessments**

The 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 arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session x \$1,125.00	= \$1,125.00
Hearing Date: August 11, 2004 1 session	
Total Forum Fees	= \$1,125.00

Pursuant to NASD Dispute Resolution Code of Arbitration Procedure Rule 10306, forum fees are to be divided equally among the parties, or as follows:

1. Claimants shall pay \$281.25;
2. Respondent Royal Alliance shall pay \$281.25;
3. Respondent Pines Financial shall pay \$281.25; and
4. Respondent Culella shall pay \$281.25.

Pursuant to NASD Dispute Resolution Code of Arbitration Procedure Rule 10332(f):  
Claimants' Hearing Session Deposit of \$843.75 is retained by NASD.

**FEE SUMMARY**

Claimants Devine are hereby jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 281.25
Hearing Session Deposit Retained	= \$ 843.75
Total Fees	= \$1,425.00
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Royal Alliance is hereby solely liable for:

Member Fees	= \$5,200.00
Forum Fees	= \$ 281.25
Total Fees	= \$5,481.25
Less payments	= \$5,481.25
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Pines Financial is hereby solely liable for:

Forum Fees	= \$ 281.25
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 281.25

Respondent Culella is hereby solely liable for:

Forum Fees	= \$ 281.25
Less payments	= \$ 281.25
Balance Due NASD Dispute Resolution	= \$ 0.00

All balances are due to NASD Dispute Resolution.

**ARBITRATION PANEL**

Norton J. Fendelman	-	Public Arbitrator, Presiding Chairperson
C.J. McEnery, Jr.	-	Public Arbitrator
Sherie L. Catlett	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/ Norton J. Fendelman, Esq.  
Norton J. Fendelman, Esq.  
Public Arbitrator, Presiding Chair

5/2/05  
Signature Date

/s/ C.J. McEnery, Jr.  
C.J. McEnery, Jr.  
Public Arbitrator

5/19/05  
Signature Date

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/s/Sherie L. Catlett

Sherie L. Catlett

Non-Public Arbitrator

5/19/05

Signature Date

5/20/05

Date of Service (For NASD office use only)

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Respondent Pines Financial is hereby solely liable for:

Forum Fees	= \$ 281.25
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 281.25

Respondent Culella is hereby solely liable for:

Forum Fees	= \$ 281.25
Less payments	= \$ 281.25
Balance Due NASD Dispute Resolution	= \$ 0.00

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Norton J. Fendelman

Norton J. Fendelman, Esq.  
 Public Arbitrator, Presiding Chair

5/20/05

Signature Date

C.J. McEnery, Jr.  
 Public Arbitrator

Signature Date

### NASD Dispute Resolution

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Sherrill Caldwell

**Sherie L. Catlett**  
**Non-Public Arbitrator**

5/19/05

**Signature Date**

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