

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

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In the Matter of the Arbitration Between:

Mollie Schartoff, individually, and on behalf of the Mollie Schartoff IRA, Claimant v.  
Diversified Securities, Inc., Louis S. Faubert, and Phillip M. Faubert, Respondents

Case Number: 03-06213

Hearing Site: Los Angeles, California

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Nature of the Dispute: Customer v. Member and Associated Persons

**REPRESENTATION OF PARTIES**

For Claimant:

Ronald A. Marron, Esq.  
Law Offices of Ronald A. Marron  
Imperial Beach, California

For Respondents:

Christopher S. Frederick, Esq.  
Liner, Yankelevitz, Sunshine,  
Regenstrief LLP  
Los Angeles, California

**CASE INFORMATION**

Statement of Claim filed: August 18, 2003

Claimant's Uniform Submission Agreement filed: August 18, 2003

Respondents' Joint Statement of Answer filed: January 9, 2004

Respondent Diversified Securities, Inc.'s Uniform Submission Agreement filed:  
February 23, 2004

Respondent Louis S. Faubert's Uniform Submission Agreement filed: February 23, 2004

### **CASE SUMMARY**

Claimant alleged breach of fiduciary duty, fraud, deceit, omission of facts, misrepresentation, unsuitability, violation of state and federal laws, violations of NYSE and NASD Rules of Conduct, professional malpractice, and failure to supervise. Claimant's allegations involved the purchase of mutual fund Class B shares in the Oppenheimer Capital Appreciation Fund and the Putnam Investors Fund

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested \$50,000.00 in compensatory damages, rescission of transactions, management fees, disgorgement of commissions, return of margin interest and redemption fees, loss of income from the sale of safe fixed annuities and deferred sales charges incurred from purchasing the subject B shares, unspecified punitive damages, pre- and post-award interest at 10%, and costs, including attorney's fees.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety, and expungement of all reference to the above captioned arbitration from Respondents Louis S. Faubert and Phillip M. Faubert's registration records maintained by the NASD Central Registration Depository.

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

Respondent Phillip M. Faubert did not file with NASD Dispute Resolution a properly executed submission agreement; however, Respondent Phillip M. Faubert is required to submit to arbitration and, having answered the claim, is bound by the determination of the Panel on all issues submitted.

On December 13, 2003, Claimant Mollie Schartoff and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

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, and the Parties' request for this stipulated award, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant and Respondents have entered into a confidential settlement agreement.
2. The Statement of Claim is dismissed with prejudice.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Louis S. Faubert's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Louis S. Faubert must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
4. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Phillip M. Faubert's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Phillip M. Faubert must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

### **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	= \$ 175.00
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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 Diversified Securities Inc., is a party and the following fees are assessed:

Member Surcharge	= \$ 875.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$1,000.00</u>
Total Member Fees	= \$2,625.00

#### **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/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 14, 2004 1 session	
One (1) Pre-hearing conference session with the Panel @ \$600.00/session	= \$ 600.00
Pre-hearing conference: March 9, 2004 1 session	
<u>Total Forum Fees</u>	<u>= \$1,050.00</u>

1. The Panel assessed \$ 525.00 of the forum fees to Claimant Mollie Schartoff.
2. The Panel assessed \$ 525.00 of the forum fees jointly and severally to Respondents Diversified Securities Inc., Louis S. Faubert, and Phillip M. Faubert.

#### **Administrative Costs**

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and sundry other requests.

Respondent, Diversified Securities Inc., requested 21 photocopies @ \$.50/page: = \$ 10.50

**Fee Summary**

1. Claimant Mollie Schartoff is charged with the following fees and costs:

Initial Filing Fee	= \$ 175.00
<u>Forum Fees</u>	= \$ 525.00
Total Fees	= \$ 700.00
Hearing Session Deposit retained pursuant to Rule 10332 (f)	= \$ 75.00
<u>Less payments</u>	= \$ (775.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

2. Respondent Diversified Securities Inc. is charged with the following fees and costs:

Member Fees	= \$ 2,625.00
<u>Administrative Costs</u>	= \$ 10.50
Total Fees	= \$ 2,635.50
<u>Less payments</u>	= \$(2,625.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 10.50</b>

3. Respondents Diversified Securities Inc., Louis S. Faubert, and Phillip M. Faubert are charged jointly and severally with the following fees and costs:

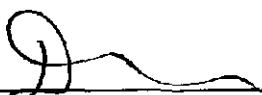
Forum Fees	= \$ 525.00
<u>Less Payments</u>	= \$ (0.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 525.00</b>

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>Dennis A. Torres</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Rosa Linda Guadarrama</i>	-	<i>Public Arbitrator</i>
<i>Klaus H. Boerner</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

  
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Dennis A. Torres  
Chair, Public Arbitrator

25 FEB 2005  
Signature Date

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Rosa Linda Guadarrama  
Public Arbitrator

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

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Klaus H. Boerner  
Non-Public Arbitrator

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

March 2, 2005  
Date of Service

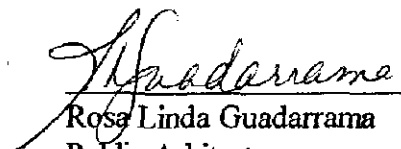
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Chair, Public Arbitrator

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Signature Date

  
\_\_\_\_\_  
Rosa Linda Guadarrama  
Public Arbitrator

3/1/05  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Klaus H. Boerner  
Non-Public Arbitrator

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

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***Public Arbitrator***

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***Non-Public Arbitrator***

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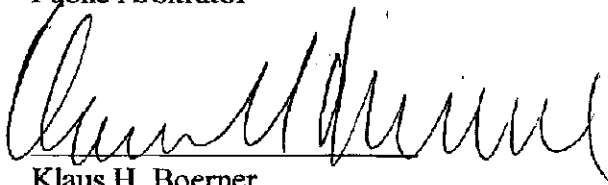
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Rosa Linda Guadarrama  
Public Arbitrator

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Signature Date



Klaus H. Boerner  
Non-Public Arbitrator

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Signature Date

*L. L. S. 05*

*March 2, 2005*  
Date of Service