

**STIPULATED AWARD  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Claimant

Inez L. Gantz

v.

04-02092  
Minneapolis, Minnesota

Respondents

Waddell & Reed, Inc. and  
Janet L. Utech

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Nature of the Dispute: Customer vs. Member and Associated Person

**REPRESENTATION OF PARTIES**

Inez L. Gantz ("Claimant") was represented by Richard I. Diamond, Esq., Minnetonka, Minnesota.

Waddell & Reed, Inc. ("Waddell") and Janet L. Utech ("Utech"), hereinafter collectively referred to as "Respondents," were represented by Jeffrey J. Kalinowski, Esq., Blackwell Sanders Peper Martin, LLP, St. Louis, Missouri.

**CASE INFORMATION**

The Statement of Claim was filed on or about March 29, 2004. The Submission Agreement of Claimant was signed on or about March 17, 2004.

The Statement of Answer was filed jointly by Respondents, Waddell and Utech, on or about May 24, 2004. The Submission Agreement of Respondent Waddell was signed on or about April 12, 2004. The Submission Agreement of Respondent Utech was signed on or about May 5, 2004.

**CASE SUMMARY**

Claimants asserted the following causes of action: negligence; breach of fiduciary duty; misrepresentations; suitability; and fraud. The causes of action are related to the purchase and sale of various securities in Claimant's account including a variable annuity offered by United Investors Life Insurance Company.

Unless specifically admitted in its Answer, Respondents, Waddell and Utech, denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant

failed to state a claim upon which relief can be granted; Claimant's claims are barred by the doctrines of waiver, estoppel, acquiescence; ratification and laches; and Claimant failed to mitigate his or its damages, if any.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$125,000.00
Punitive Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondents requested that the claims asserted against them be denied in its entirety and that they be awarded their costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

The parties advised NASD Dispute Resolution that they entered into an agreement to settle this matter on certain terms and conditions set forth in a confidential settlement agreement.

The parties have agreed that the Stipulated Award in this matter may be executed in counterpart copies. 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. Claimant's claims, having been withdrawn, are hereby dismissed with prejudice;
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Janet L Utech'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, Respondent Janet L. Utech 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 the non-refundable filing fees for each claim:

Initial claim filing fee	\$ 300.00
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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. In this matter, the member firm is Waddell & Reed, Inc.

Member surcharge	\$ 1,700.00
Pre-hearing process fee	\$ 750.00
Hearing process fee	\$ 2,750.00
Member Fees	<u>\$ 5,200.00</u>

#### **Adjournment Fees**

Adjournments requested during these proceedings:

January 18-20, 2005, requested by Claimant and Respondents	\$ 1,125.00
Total Adjournment Fees	<u>\$ 1,125.00</u>

The Panel waived the adjournment fee.

#### **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 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	x \$ 1,125.00	\$ 1,125.00
Pre-hearing conference: August 31, 2004	1 session	
Total Forum Fees		<u>\$ 1,125.00</u>

The Arbitration Panel has assessed \$562.50 of the forum fees to Claimant.

The Arbitration Panel has assessed \$562.50 of the forum fees jointly and severally to Respondents, Waddell and Utech.

**FEE SUMMARY**

Claimant, Gantz, shall be and hereby is liable for:

Initial Filing Fee	\$ 300.00
Forum Fees	\$ 562.50
Total Fees	\$ 862.50
Less Payments	\$ 862.50
Balance Due NASD Dispute Resolution	\$ 0.00

Respondent, Waddell, shall be and hereby is liable for:

Member Fee	\$ 5,200.00
Total Fees	\$ 5,200.00
Less Payments	\$ 5,262.50
Refund from NASD Dispute Resolution	\$ 62.50

Respondents, Waddell and Utech, shall be and hereby are jointly and severally liable for:

Forum Fees	\$ 562.50
Total Fees	\$ 562.50
Less Payments	\$ 562.50
Balance Due NASD Dispute Resolution	\$ 0.00

**All balances are due to NASD Dispute Resolution**

**ARBITRATION PANEL**

Thomas J. Gmeinder, Esq. - Public Arbitrator, Presiding Chair  
Jeffrey W. Jacobs, Esq. - Public Arbitrator  
Robert L. Schnell, Jr., Esq. - Non-Public Arbitrator

Concurring Arbitrators:

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Thomas J. Gmeinder, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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Jeffrey W. Jacobs, Esq.  
Public Arbitrator

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

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Robert L. Schnell, Jr., Esq.  
Non-Public Arbitrator

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

8/24/05  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

Thomas J. Gmeinder, Esq. - Public Arbitrator, Presiding Chair  
Jeffrey W. Jacobs, Esq. - Public Arbitrator  
Robert L. Schnell, Jr., Esq. - Non-Public Arbitrator

Concurring Arbitrators:

Thomas J. Gmeinder  
Thomas J. Gmeinder, Esq.  
Public Arbitrator, Presiding Chair

8-12-05  
Signature Date

Jeffrey W. Jacobs, Esq.  
Jeffrey W. Jacobs, Esq.  
Public Arbitrator

Signature Date

Robert L. Schnell, Jr., Esq.  
Robert L. Schnell, Jr., Esq.  
Non-Public Arbitrator

Signature Date

8/29/05  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

Thomas J. Gmeinder, Esq. - Public Arbitrator, Presiding Chair  
Jeffrey W. Jacobs, Esq. - Public Arbitrator  
Robert L. Schnell, Jr., Esq. - Non-Public Arbitrator

Concurring Arbitrators:

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Thomas J. Gmeinder, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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Jeffrey W. Jacobs, Esq.  
Public Arbitrator

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8-26-05  
Signature Date

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Robert L. Schnell, Jr., Esq.  
Non-Public Arbitrator

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

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8/29/05  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

Thomas J. Gmeinder, Esq. - Public Arbitrator, Presiding Chair  
Jeffrey W. Jacobs, Esq. - Public Arbitrator  
Robert L. Schnell, Jr., Esq. - Non-Public Arbitrator

**Concurring Arbitrators:**

\_\_\_\_\_  
Thomas J. Gmeinder, Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Jeffrey W. Jacobs, Esq.  
Public Arbitrator

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

  
\_\_\_\_\_  
Robert L. Schnell, Jr., Esq.  
Non-Public Arbitrator

8/25/05  
\_\_\_\_\_  
Signature Date

8/29/05  
\_\_\_\_\_  
Date of Service (For NASD office use only)