

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Claimant

Walter Edwin Moore, III

and

Case Number: 04-02504  
Hearing Site: Troy, Michigan

Respondents

GunnAllen Financial, Inc., and  
Wesley G. Gardner

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**NATURE OF DISPUTE**

Customer v. Member and Associated Person

**REPRESENTATION OF PARTIES**

Walter Edwin Moore, III ("Claimant") was represented by Anthony V. Trogan, Esq., and Lysa Postula-Stein, Esq., Anthony V. Trogan, PLLC, West Bloomfield, Michigan.

GunnAllen Financial, Inc. ("GunnAllen") and Wesley G. Gardner ("Gardner"), hereinafter collectively referred to as "Respondents," were represented by Michael H. Ference, Esq., Sichenzia Ross Friedman & Ference LLP, New York, New York.

**CASE INFORMATION**

The Statement of Claim was filed on or about April 7, 2004. The Submission Agreement of Walter Edwin Moore, III, was signed on or about March 27, 2004.

The Statement of Answer was filed jointly by Respondents on or about June 4, 2004.

**CASE SUMMARY**

Claimant asserted the following legal theories in support of his claim: breach of contract, common law fraud, promissory estoppel, negligence, malpractice, breach of fiduciary duty, and breach of Michigan securities laws. The causes of action related to Claimant's allegations that Respondents placed him in unspecified high risk "tech" securities on margin, which investment strategy employed short positions. Claimant asserted that this investment strategy was in contravention of his conservative investment goals.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant fails to state a claim upon which relief can be granted; Claimant's losses are the result of market losses, and are not entitled to recovery thereof from Respondents; Claimant is barred from recovery by the doctrine of ratification; and Claimant's claims are barred by the doctrines of laches, waiver, ratification and estoppel.

### **RELIEF REQUESTED**

**Claimant requested:**

Compensatory damages	\$128,000.00
Punitive/ Exemplary Damages	\$ unspecified
Interest	\$ unspecified
Attorneys' Fees	\$ unspecified
Other Costs	\$ unspecified
Other Monetary/Non-Monetary Relief:	unspecified additional or alternate damages, rescission

Respondents requested that the claims asserted against them be dismissed in their entirety and that they be awarded their costs and expenses including attorneys' fees, and such other relief the panel deemed appropriate.

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

Respondents, GunnAllen Financial, Inc., and Wesley G. Gardner, did not file with NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing (GunnAllen through its branch manager) are bound by the determination of the arbitration panel on all issues submitted.

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 NASD Dispute Resolution ("NASD").

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Respondent, GunnAllen Financial, Inc., is solely liable for and shall pay to Claimant, Walter Edwin Moore, III, the sum of \$48,853.00 in compensatory damages;
- 2.) Respondent, GunnAllen Financial, Inc., is solely liable for and shall pay to Claimant, Walter Edwin Moore, III, the sum of \$16,121.00 in attorneys' fees pursuant to Michigan statute;
- 3.) Respondent, GunnAllen Financial, Inc., is solely liable for and shall pay to Claimant, Walter Edwin Moore, III, the sum of \$2,500.00 in costs;

- 4.) Claimant's claims, each and all, against Wesley G. Gardner, are denied and dismissed with prejudice; and
- 5.) Any relief not specifically enumerated, 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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is GunnAllen Financial, Inc.

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

#### **Adjournment Fees**

Adjournments requested during these proceedings:

August 2-4, 2006, adjournment request jointly (fee waived) = \$ 1,125.00  
July 18, 2006, requested by Respondents = \$ 1,125.00

#### **Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

On July 14, 2006, Respondents jointly requested adjournment of the hearing scheduled to begin on July 18, 2006. = \$ 300.00

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

The Panel has assessed forum fees for each hearing session conducted and each decision rendered on a discovery-related motion on the papers. 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:

One (1) Pre-hearing session with Panel x \$1,125.00	= \$ 1,125.00
Pre-hearing conference: October 6, 2004 1 session	
Four (4) Hearing sessions x \$1,125.00	= \$ 4,500.00
Hearing Dates: July 20, 2006 2 sessions	
July 21, 2006 2 sessions	
<b>Total Forum Fees</b>	<b>= \$ 5,625.00</b>

The Arbitration Panel has assessed \$2,812.50 of the forum fees to Walter Edwin Moore, III.

The Arbitration Panel has assessed \$2,812.50 of the forum fees to GunnAllen Financial, Inc.

#### **Fee Summary**

Claimant, Walter Edwin Moore, III, is liable for:

Initial Filing Fee	= \$ 300.00
Adjournment Fee	= \$ 562.50
Forum Fees	= \$ 2,812.50
<b>Total Fees</b>	<b>= \$ 3,675.00</b>
<b>Less payments</b>	<b>= \$ 1,425.00</b>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 2,250.00</b>

Respondent, GunnAllen Financial, Inc., is liable for:

Member Fees	= \$ 5,200.00
Adjournment Fee	= \$ 562.50
Three-Day Cancellation Fee	= \$ 300.00
Forum Fees	= \$ 2,812.50
<b>Total Fees</b>	<b>= \$ 8,875.00</b>
<b>Less payments</b>	<b>= \$ 5,200.00</b>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 3,675.00</b>

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

**ARBITRATION PANEL**

John F. Burns, Esq. - Public Arbitrator, Presiding Chair  
Raymond J. Sterling, Esq. - Public Arbitrator  
Douglas H. McDonald - Non-Public Arbitrator

**Concurring Arbitrator:**

/s/ John F. Burns, Esq.  
John F. Burns, Esq.  
Public Arbitrator, Presiding Chair

August 4, 2006  
Signature Date

**Arbitrators Concurring in Part and Dissenting in Part:**

I concur with the finding of liability and damages, however, I would have also awarded interest.

/s/ Raymond J. Sterling, Esq.  
Raymond J. Sterling, Esq.  
Public Arbitrator

August 4, 2006  
Signature Date

I concur with the finding of liability and damages, however I would not have awarded attorneys' fees.

/s/ Douglas H. McDonald  
Douglas H. McDonald  
Non-Public Arbitrator

August 4, 2006  
Signature Date

August 4, 2006  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

John F. Burns, Esq. - Public Arbitrator, Presiding Chair  
Raymond J. Sterling, Esq. - Public Arbitrator  
Douglas H. McDonald - Non-Public Arbitrator

**Concurring Arbitrator:**

John F. Burns  
John F. Burns, Esq.  
Public Arbitrator, Presiding Chair

August 4 '06  
Signature Date

**Arbitrators Concurring in Part and Dissenting in Part:**

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\_\_\_\_\_  
Raymond J. Sterling, Esq.  
Public Arbitrator

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

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Douglas H. McDonald  
Non-Public Arbitrator

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Signature Date

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Public Arbitrator, Presiding Chair

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Signature Date

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\_\_\_\_\_  
*Raymond J. Sterling*  
Raymond J. Sterling, Esq.  
Public Arbitrator

\_\_\_\_\_  
8/3/06  
Signature Date

I concur with the finding of liability and damages, however I would not have awarded attorneys' fees.

\_\_\_\_\_  
Douglas H. McDonald  
Non-Public Arbitrator

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Signature Date

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Douglas H. McDonald  
Non-Public Arbitrator

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8-4-06  
Signature Date

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