

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

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In the Matter of the Arbitration Between:

Jessica Alejandra Gutierrez (Claimant) v. BNY Investment Center, Inc. and Gail E. Hollingsworth (Respondents)

Case Number: 04-02686

Hearing Site: New York, New York

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

**REPRESENTATION OF PARTIES**

Claimant Jessica Alejandra Gutierrez ("Gutierrez") hereinafter referred to as "Claimant":  
Stephen H. Weiner, Esq., Law Office of Stephen H. Weiner, New York, NY.

Respondents BNY Investment Center, Inc. ("BNY") and Gail E. Hollingsworth  
("Hollingsworth") hereinafter collectively referred to as "Respondents": Dan J. Schulman, Esq.,  
Salans, New York, NY. Previously represented by: Dan J. Schulman, Esq., Buchanan Ingersoll,  
PC, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: April 12, 2004.

Claimant signed the Uniform Submission Agreement: March 10, 2004.

Joint Statement of Answer filed by Respondents on or about: June 11, 2004.

Respondent BNY signed the Uniform Submission Agreement: June 9, 2004.

Respondent Hollingsworth signed the Uniform Submission Agreement: June 10, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: unsuitability; breach of fiduciary duty; and respondeat superior. The causes of action relate to mutual funds, including a Fidelity Advisor Ser I Asset Allocation Fund, a Fidelity Advisor SR 1 Advisor Growth & Income Fund, a Fidelity Advisor SR II High Yield FD CL A, a Fidelity Advisor SR 1 Eqty Port Grwth Class A, a Fidelity Advisor SR II Growth Opptys Port Cl A, and Fidelity Advisor Ser IV Inter Bd Fd Cl A.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$53,000.00; interest in the amount of \$15,000.00; reasonable attorneys' fees; costs; and such other relief deemed to be necessary and proper.

Respondents requested that the Claim be dismissed; attorneys' fees and costs; and such other and further relief as the Panel may deem just and proper.

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

The parties unanimously agreed that the non-public arbitrator, Roger Hawke, Esq., serve as the Chairperson in this matter.

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 pleadings, and the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are dismissed in their entirety.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Gail E. Hollingsworth's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-16, Respondent Gail E. Hollingsworth must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130 of the NASD Code of Arbitration Procedure, the arbitration panel has made the following affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous.

3. Any and all relief not specifically addressed herein is denied.

### **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 = \$225.00

**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. Accordingly, BNY Investment Center, Inc. is a party.

Member surcharge = \$1,100.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$1,700.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

February 2-3, 2005, adjournment by Respondents = \$ 750.00  
Claimant's share: = \$ 375.00  
Respondent's share: = \$ 375.00

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A 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:

Two (2) Pre-hearing sessions with Panel @ \$750.00 = \$1,500.00  
Pre-hearing conferences: September 21, 2004 1 session  
January 24, 2005 1 session

Two (2) Hearing sessions @ \$750.00 = \$1,500.00  
Hearing Date: February 28, 2005 2 sessions  
Total Forum Fees = \$3,000.00

1. The Panel has assessed \$1,500.00 of the forum fees against Claimant.
2. The Panel has assessed \$1,500.00 of the forum fees jointly and severally against Respondents.

**Fee Summary**

1. Claimant is solely liable for:  
Initial Filing Fee = \$ 225.00  
Adjournment Fee = \$ 375.00  
Forum Fees = \$1,500.00  
Total Fees = \$2,100.00  
Less payments = \$ 975.00  
Balance Due NASD Dispute Resolution = \$ 1,125.00

2. Respondent BNY is solely liable for:

Member Fees	= \$3,550.00
<u>Adjournment Fee</u>	= \$ 375.00
Total Fees	= \$3,925.00
<u>Less payments</u>	= \$3,550.00
Balance Due NASD Dispute Resolution	= \$ 375.00

3. Respondents are jointly and severally liable for:

Adjournment Fee	= \$ 375.00
<u>Forum Fees</u>	= \$1,500.00
Total Fees	= \$1,875.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$1,875.00

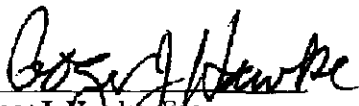
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Roger J. Hawke, Esq.	-	Non-Public Arbitrator, Presiding Chairperson
Denzil J. Klippel	-	Public Arbitrator
Eric P. Nachmann, Esq.	-	Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

  
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Roger J. Hawke, Esq.  
Non-Public Arbitrator, Presiding Chairperson

3/4/05  
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Signature Date

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Denzil J. Klippel  
Public Arbitrator

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

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Eric P. Nachmann, Esq.  
Public Arbitrator

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

March 16, 2005  
\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

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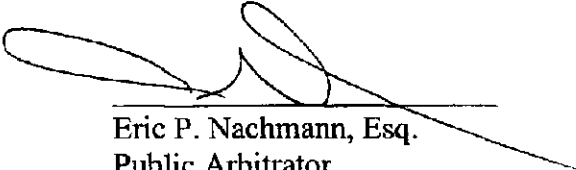
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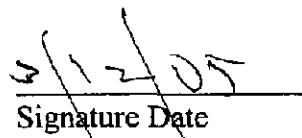
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Denzil L. Klippel  
Public Arbitrator

3/7/2005  
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Eric P. Nachmann, Esq.  
Public Arbitrator

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Signature Date

March 16, 2005

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