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

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In the Matter of the Arbitration Between:

Names of the Claimants

Thomas M. Rice, IRA,  
Edith Pauline and Thomas M. Rice JTEN  
Janet Sue Argent & Thomas Rice JTEN

Case Number: 04-02756

Name of the Respondent

Goelzer Investment Management

Hearing Site: Orlando, Florida

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

For Thomas M. Rice, IRA (T. Rice), Edith Pauline (E. Rice) and Thomas M. Rice JTEN and Janet Sue Argent (Argent) & Thomas Rice JTEN, hereinafter collectively referred to as "Claimants": Matthew D. Pardy, Esq., Kim, Smith & Pardy, P.A., Orlando, Florida.

For Goelzer Investment Management, hereinafter referred to as "Respondent": Tucker H. Byrd, Esq., Greenberg Traurig, P.A., Orlando, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: April 6, 2004.

Claimants signed the Uniform Submission Agreements: March 31, 2004.

Respondent signed the Uniform Submission Agreement: June 3, 2004.

Statement of Answer filed by Respondent on or about: July 9, 2004.

**CASE SUMMARY**

Claimants asserted the following causes of action: unsuitability; breach of fiduciary duty; failure to supervise; controlling person liability; respondeat superior; violations of SRO rules including, but not limited to, NYSE Rules 401 and 405, and NASD Conduct Rules 2110 (Standards of Commercial Honor and Principles of Trade), 2120 (Use of Manipulative, Deceptive or Other Fraudulent Devices), 2210 (Communications with the Public), 2310 (Recommendations to Customers-Suitability), and 3010; violation of state laws including Section 517.301, Florida Statutes; negligence; breach of contract; and, violation of NASD Conduct Rule. The causes of action relate to the purchase and sale of various unspecified securities, the bulk of which consisted of technology stocks in Claimants' accounts.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various defenses.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in an amount not less than \$732,199.06, plus interest, disgorgement of all commissions, fees and other charges paid by Claimants to Respondent, costs, statutory interest, punitive damages, attorneys' fees and such other and further relief as the Panel deemed just and proper.

Respondent requested that the Panel deny Claimants' Statement of Claim, and all other appropriate relief.

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

The parties have agreed that the Award in this matter may be executed in counterpart copies.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondent is liable on the claims of breach of fiduciary duty and failure to supervise, and shall pay to Claimant T. Rice, individually, compensatory damages in the amount of \$18,622.00, interest specifically excluded.

Respondent is liable on the claims of breach of fiduciary duty, failure to supervise, controlling person liability and negligence, and shall pay to Claimant E. Rice, individually, compensatory damages in the amount of \$ 15,000.00, interest specifically excluded.

Respondent is liable on the claims of breach of fiduciary duty, failure to supervise, controlling person liability and negligence, and shall pay to Claimant Argent, individually, compensatory damages in the amount of \$20,000.00, interest specifically excluded.

Respondent is liable and shall pay to Claimants the sum of \$375.00 representing reimbursement of the claim filing fee previously paid by Claimants to NASD Dispute Resolution.

Any and all claims for relief not specifically addressed herein, including Claimants' claims for relief pursuant to Section 517.301 of the Florida Statutes and Claimants' request for punitive damages, are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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	= \$ 375.00
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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 Goelzer Investment Management is a party.

Member surcharge	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$4,000.00

**Adjournment Fees**

Adjournment granted during these proceedings for which fees were assessed:

No adjournment fees were incurred in this matter.

**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:

No three-day cancellation fees were incurred in this matter.

**Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were incurred in this matter.

**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:

One (1) Pre-hearing session with the Panel @ \$1,200.00/session	= \$1,200.00
Pre-hearing conference: November 10, 2004 1 session	

Six (6) Hearing sessions @ \$1,200.00/ session	= \$7,200.00
Hearing Dates: September 27, 2005 2 sessions	
September 28, 2005 2 sessions	
September 29, 2005 2 sessions	

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Total Forum Fees	= \$8,400.00
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The Panel has assessed the total forum fees of \$8,400.00 to Respondent.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to: additional copies of arbitrator awards; copies of audio transcripts; retrieval of documents from archives; interpreters; and, security.

No administrative costs were incurred in this matter.

**Fee Summary**

Claimants are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 375.00
<u>Total Fees</u>	= \$ 375.00
<u>Less payments</u>	= \$ 375.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent is solely liable for:

<u>Member Fees</u>	= \$ 7,000.00
<u>Forum Fees</u>	= \$ 8,400.00
<u>Total Fees</u>	= \$15,400.00
<u>Less payments</u>	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$ 8,400.00

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

**ARBITRATION PANEL**

Cindy L. Anderson	-	Public Arbitrator, Presiding Chairperson
Gordon R. Bowker	-	Public Arbitrator
Alison Hardage	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/

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Cindy L. Anderson  
Public Arbitrator, Presiding Chairperson

10/05/05

Signature Date

/s/

\_\_\_\_\_  
Gordon R. Bowker  
Public Arbitrator

10/05/05

Signature Date

/s/

\_\_\_\_\_  
Alison Hardage  
Non-Public Arbitrator

10/05/05

Signature Date

10/06/2005

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution office use only)

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Concurring Arbitrators' Signatures



Cindy L. Anderson  
Public Arbitrator, Presiding Chairperson

10/5/05  
Signature Date

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Gordon R. Bowker  
Public Arbitrator

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Signature Date

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Alison Hardage  
Non-Public Arbitrator

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Signature Date

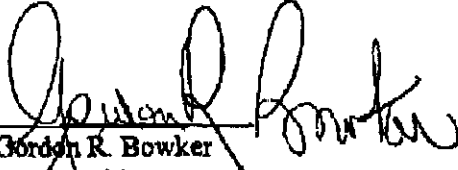
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Public Arbitrator, Presiding Chairperson

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Public Arbitrator

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