

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

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In the Matter of the Arbitration Between:

Gilbert R. Sugarman and The Gilbert R. Sugarman IRA Rollover Account (Claimants) v.  
Warfield Associates, Inc. and Thomas R. Warfield (Respondents)

Case Number: 04-03156

Hearing Site: New York, New York

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

**REPRESENTATION OF PARTIES**

Claimants Gilbert R. Sugarman ("Sugarman") and The Gilbert R. Sugarman IRA Rollover Account ("Sugarman IRA") hereinafter collectively referred to as "Claimants": Michael P. Gilmore, Esq., Sims Moss Kline & Davis, LLP, Mineola, NY.

Respondents Warfield Associates, Inc. ("Warfield") and Thomas R. Warfield ("T. Warfield") hereinafter collectively referred to as "Respondents": Allan Rooney, Esq., Menaker & Herrmann, LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: April 28, 2004.

Answer to Counterclaim filed by Claimants on or about: June 30, 2004.

Claimants signed the Uniform Submission Agreement: April 26, 2004.

Joint Statement of Answer with Counterclaim filed by Respondents on or about: June 22, 2004.

Respondent Warfield signed the Uniform Submission Agreement: June 22, 2004.

Respondent T. Warfield signed the Uniform Submission Agreement: June 14, 2004.

**CASE SUMMARY**

Claimants asserted the following causes of action: unsuitability; misrepresentations and omissions; breach of fiduciary obligations; failure to supervise; and negligence and gross negligence; and negligent misrepresentation. The causes of action relate to shares of Broadcom, Cisco, Corning, Sun Microsystems, Veritas, Xilinx, Applied Materials, Morgan Stanley, AIG, Lehman Brother, Goldman Sachs, and Enron, EMC Corp., El Paso Corp., and Celestica Inc. Unless specifically admitted in their Answer to the Counterclaim, Claimants denied the allegations made in the Counterclaim.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In their Counterclaim, Respondents asserted the following causes of action: misrepresentations and omissions.

### **RELIEF REQUESTED**

Claimants requested compensatory damages and/or rescissionary damages in the amount of \$1,482,997.68; disgorgement of Respondents' compensation; interest; attorneys' fees; costs, expert and witness fees and administrative expenses; and any other and further relief the Panel finds just and equitable. In their Answer to the Counterclaim, Claimants requested that the Counterclaim be denied in its entirety.

Respondents requested an award dismissing the Statement of Claim; compensatory damages on the Counterclaim in the amount of no less than \$50,000.00; administrative costs, disbursements, and legal expenses; and such other and further relief as the Panel may deem just and proper.

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

Respondents made a motion to consolidate. After due consideration, the Panel determined to deny the motion.

Respondents made a motion to change the hearing venue from Newark, New Jersey to New York, New York. After due consideration, the Panel determined to grant the motion.

Claimants made a motion to quash subpoenas, a motion to preclude, and motions to compel discovery. After due consideration, the Panel determined to deny these motions.

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. Respondents are jointly and severally liable for and shall pay to Claimants compensatory damages in the amount of \$150,000.00.
2. Respondents are jointly and severally liable for and shall pay to Claimants the sum of \$500.00, to reimburse Claimants for the filing fee previously paid to NASD Dispute Resolution.
3. Respondents' Counterclaims are denied in their entirety.
4. 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	= \$ 500.00
Counterclaim filing fee	= \$1,000.00

#### 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, Warfield Associates, Inc. is a party.

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,000.00

#### 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:

One (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: January 10, 2005 1 session	

One (1) Pre-hearing session with Panel @ \$1,200.00	= \$ 1,200.00
Pre-hearing conference: September 20, 2004 1 session	

Ten (10) Hearing sessions @ \$1,200.00	= \$12,000.00
Hearing Dates:	
February 14, 2005	2 sessions
February 15, 2005	2 sessions
February 16, 2005	2 sessions
February 17, 2005	2 sessions
February 18, 2005	2 sessions

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Total Forum Fees	= \$13,650.00
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1. The Panel has assessed \$13,650.00 of the forum fees jointly and severally against Respondents.

#### Fee Summary

1. Claimants are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 500.00
Total Fees	= \$ 500.00
<u>Less payments</u>	= \$ 1,700.00
Refund Due Claimants	= \$ 1,200.00

*As stated in the "Award" section above, Respondents are jointly and severally liable for and shall reimburse Claimants for the \$500.00 filing fee.*

2. Respondent Warfield is solely liable for:

<u>Member Fees</u>	= \$ 8,550.00
<u>Total Fees</u>	= \$ 8,550.00
<u>Less payments</u>	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally liable for:

Counterclaim Filing Fee	= \$ 1,000.00
<u>Forum Fees</u>	= \$13,650.00
<u>Total Fees</u>	= \$14,650.00
<u>Less payments</u>	= \$ 1,450.00
Balance Due NASD Dispute Resolution	= \$13,200.00

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

**ARBITRATION PANEL**

Alan E. Gross, Ph.D	-	Public Arbitrator, Presiding Chairperson
Evdokia Sofos, Esq.	-	Public Arbitrator
Robina Fedora Asti	-	Non-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.



Alan E. Gross, Ph.D  
Public Arbitrator, Presiding Chairperson

2/25/05  
Signature Date

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Evdokia Sofos, Esq.  
Public Arbitrator

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

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Robina Fedora Asti  
Non-Public Arbitrator

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Signature Date

March 1, 2005

Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

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Signature Date

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Public Arbitrator

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Evdokia Sofos, Esq.  
Public Arbitrator

3-2-05  
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Signature Date

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Robina Fedora Asti  
Non-Public Arbitrator

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Signature Date

March 1, 2005  
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