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

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In the Matter of the Arbitration Between:

Names of the Claimants

Joann E. Desrosiers  
Estate of Wilfred N. Desrosiers  
Joann E. Desrosiers Revocable Trust

Case Number: 04-03380

Name of the Respondent

Robert W. Baird & Co. Incorporated

Hearing Site: Tampa, Florida

Name of the Third Party Respondent

David Desrosiers

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Nature of the Dispute: Customer vs. Member v. Customer.

**REPRESENTATION OF PARTIES**

For Joann E. Desrosiers, Estate of Wilfred N. Desrosiers and Joann E. Desrosiers Revocable Trust, hereinafter collectively referred to as "Claimants": Joseph H. Varner, III, Esq., Knopik Varner & Moore, Tampa, Florida.

For Robert W. Baird & Co. Incorporated, hereinafter referred to as "Respondent Baird": Christopher J. Barber, Esq., Gardner Carton & Douglas, LLP, Chicago, Illinois.

For David Desrosiers, hereinafter referred to as "Third Party Respondent": Jason Thompson, Esq., Finkelstein & Associates, Sarasota, Florida.

**CASE INFORMATION**

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

Claimant signed the Uniform Submission Agreement on: May 4, 2004.

Statement of Answer, Affirmative Defenses and Third Party Claim filed on or about: July 22, 2004.

Respondent Baird signed the Uniform Submission Agreement on: June 28, 2004.

Motion to Dismiss filed by Third Party Respondent on or about: October 18, 2004.

Third Party Respondent did not file a Statement of Answer or executed Uniform Submission Agreement.

### **CASE SUMMARY**

Claimant alleged the following causes of action: 1) account mismanagement; 2) unsuitability; 3) churning; 4) failure to supervise; 5) breach of fiduciary duty; 6) negligence; and 7) violations of Chapter 517, Florida Statutes. The causes of action relate to investments in highly volatile, unspecified equities.

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

Respondent Baird alleged the following causes of action in its Third Party Claim: 1) breach of fiduciary duties; 2) indemnification; and 3) contribution.

Third Party Respondent moved for dismissal of the Third Party Claim.

### **RELIEF REQUESTED**

Claimant requested: 1) compensatory damages in the amount of \$1,480,800.00; 2) interest; 3) costs; and 4) attorneys' fees.

Respondent Baird requested: 1) dismissal of the Statement of Claim in its entirety; 2) indemnification and contribution from Third Party Respondent for Respondent Baird's damages resulting from Claimant's claims; 3) costs and expenses; 4) attorneys' fees; and 5) such other relief the undersigned arbitrators (the "Panel") deemed just and proper.

Third Party Respondent requested: 1) dismissal of the Third Party Claim; and 2) attorneys' fees.

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

On or about September 23, 2004, Respondent Baird filed its Motion to Initiate Default Procedures and for Entry of Default Judgment against Third Party Respondent. The Panel denied the motion.

On or about October 18, 2004, Third Party Respondent filed his Motion to Dismiss. On or about November 5, 2004, Respondent Baird filed its Response. On or about November 16, 2004, the Panel denied the motion and severed the Third Party Claim from the above-referenced arbitration proceeding.

On or about November 10, 2004, Respondent Baird filed its motion to adjourn the evidentiary hearing scheduled for April 4 – 8, 2005. On or about November 11, 2004, Claimants filed their response.

On or about November 16, 2004, the Panel granted the motion, adjourned the evidentiary hearing, denied a waiver of the adjournment fee in the amount of \$1,200.00, and assessed the adjournment fee to Respondent Baird.

On or about November 23, 2004, Respondent Baird filed its Motion for Clarification and/or Reconsideration of the Panel's Order entered on or about November 16, 2004. On or about December 7, 2004, Claimants filed their Response. On or about December 14, 2005, the Panel denied the motion.

The parties 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, 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:

1. Respondent Baird is liable and shall pay to Claimants compensatory damages in the amount of \$400,000.00, plus interest that shall accrue at the rate of 5% per annum from July 9, 2001 through the date of payment of the Award. Respondent Baird is liable on the claims of account mismanagement, unsuitability, failure to supervise, breach of fiduciary duty and negligence. Respondent Baird is not liable on the claims of churning and violations of Chapter 517, Florida Statutes.
2. Claimant's request for attorneys' fees is deferred to a court of competent jurisdiction for determination.
3. Respondent Baird's request for attorneys' fees is deferred to a court of competent jurisdiction for determination.
4. The Third Party Claim is severed. The Panel made no determination on the merits of the Third Party Claim.
5. Any and all claims or relief not specifically addressed herein are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

#### **Filing Fees**

NASD will retain or collect the non-refundable filing fees for each claim:

|                              |              |
|------------------------------|--------------|
| Initial claim filing fee     | = \$ 500.00  |
| Third Party claim filing fee | = \$2,000.00 |

#### **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, Respondent Baird is a member firm and a party.

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

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

April 4 – 8, 2005, adjournment fee assessed to Respondent Baird = \$1,200.00

**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:

There were no three-day cancellation fees assessed during these proceedings.

**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.

There were no injunctive relief fees assessed during these proceedings.

**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 a single arbitrator @ \$450.00 per session | = \$ 900.00 |
| Pre-hearing conferences: January 7, 2005 1 session                           |             |
| March 21, 2005 1 session   |             |

|  |               |
|--|---------------|
| Two (2) Pre-hearing sessions with Panel @ \$1,200.00 per session | = \$ 2,400.00 |
| Pre-hearing conferences: November 9, 2004 1 session              |               |
| December 14, 2004 1 session                                      |               |

|  |               |
|--|---------------|
| Nine (9) Hearing sessions @ \$1,200.00 per session | = \$10,800.00 |
| Hearing Dates: March 28, 2005 2 sessions           |               |
| March 29, 2005 2 sessions                          |               |
| March 30, 2005 2 sessions                          |               |
| March 31, 2005 2 sessions                          |               |
| April 1, 2005 1 session                            |               |

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|                  |               |
|------------------|---------------|
| Total Forum Fees | = \$14,100.00 |
|------------------|---------------|

The Panel has assessed forum fees in the amount of \$7,050.00 jointly and severally to Claimants.

The Panel has assessed forum fees in the amount of \$7,050.00 to Respondent Baird.

**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 not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

**Fee Summary**

Claimants are jointly and severally liable for:

|                                     |               |
|-------------------------------------|---------------|
| Initial Filing Fee                  | = \$ 500.00   |
| Forum Fees                          | = \$ 7,050.00 |
| Total Fees                          | = \$ 7,550.00 |
| Less payments                       | = \$ 1,700.00 |
| Balance Due NASD Dispute Resolution | = \$ 5,850.00 |

Respondent Baird is solely liable for:

|                                     |               |
|-------------------------------------|---------------|
| Third Party Claim Filing Fee        | = \$ 2,000.00 |
| Adjournment Fee                     | = \$ 1,200.00 |
| Member Fees                         | = \$ 8,550.00 |
| Forum Fees                          | = \$ 7,050.00 |
| Total Fees                          | = \$18,800.00 |
| Less payments                       | = \$11,050.00 |
| Balance Due NASD Dispute Resolution | = \$ 7,750.00 |

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

**ARBITRATION PANEL**

|                                |   |  |
|--------------------------------|---|--|
| M. Bruce Adelberg              | - | Non-Public Arbitrator, Presiding Chairperson |
| Paul Sidney Elliott, J.D., CFP | - | Public Arbitrator                            |
| Frank J. DeStefano             | - | Public Arbitrator                            |

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/s/\_\_\_\_\_  
M. Bruce Adelberg  
Non-Public Arbitrator, Presiding Chairperson

\_\_\_\_\_  
April 7, 2005  
Signature Date

\_\_\_\_\_/s/\_\_\_\_\_  
Paul Sidney Elliott, J.D., CFP  
Public Arbitrator

\_\_\_\_\_  
April 7, 2005  
Signature Date

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/s/  
Frank J. DeStefano  
Public Arbitrator

April 8, 2005  
Signature Date

April 8, 2005  
Date of Service (For NASD Dispute Resolution office use only)

**Signature Date**

Apr. 7. 2005 1:00PM

NASD

No. 8236

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**NASD Dispute Resolution**

Arbitration No. 04-03380

Award Page 5**Administrative Costs**

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**ARBITRATION PANEL**

M. Bruce Adelberg

Paul Sidney Elliott, J.D., CFP

Frank J. DeStefano

Non-Public Arbitrator, Presiding Chairperson

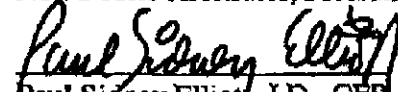
Public Arbitrator

Public Arbitrator

**Concurring Arbitrators' Signatures**

M. Bruce Adelberg

Non-Public Arbitrator, Presiding Chairperson



Paul Sidney Elliott, J.D., CFP

Public Arbitrator

Signature Date

4/7/05

Signature Date



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Frank J. DeStefano  
Public Arbitrator

4.8.05  
Signature Date

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