

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

---

In the Matter of the Arbitration Between:

Name of the Claimant

Case Number: 04-03923

Teresita Lanuza Adcock

Name of the Respondent

Hearing Site: Charlotte, North Carolina

First Citizen Investor Services, Inc.

---

Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

Claimant, Teresita Lanuza Adcock, hereinafter referred to as "Claimant", was represented by A. Daniel Woska, Esq., Woska & Hayes, L.L.P., Oklahoma City, Oklahoma 73102.

Respondent, First Citizen Investor Services, Inc., hereinafter referred to as "Respondent", was represented by Gary J. Rickner, Esq., Ward and Smith, P.A., New Bern, North Carolina.

**CASE INFORMATION**

Statement of Claim filed on May 27, 2004.

Claimant signed the Uniform Submission Agreement on May 27, 2004.

Statement of Answer filed by Respondent on July 26, 2004.

A representative of Respondent executed the Uniform Submission Agreement on June 24, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action, among others: breach of fiduciary duty, fraud, failure to supervise, negligence, breach of contract, control person liability, and violation of blue sky laws. The causes of action relate to Class B shares of AIM Balanced Fund mutual fund.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses, among others: contributory negligence, assumption of risk, estoppel, waiver, and ratification, statutes of limitations, Respondent had reasonable compliance procedures in place, any alleged damages were the result of market forces, and Claimant failed to exercise due care.

**RELIEF REQUESTED**

Claimant in her Statement of Claim requested compensatory damages between \$25,000.00 and \$30,000.00, rescission, disgorgement, punitive damages, pre-judgment interest, attorneys' fees,

and all other and further relief to which she may be entitled.

Respondent in its Statement of Answer requested the Statement of Claim be dismissed, an award of attorneys' fees and costs, and such further relief as the Arbitrator deems just and proper.

### AWARD

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

1. The account in question was opened on or about May 12, 2000 under a mutual mistake of fact or lack of mutual assent. As a result of this mutual mistake, Respondent's investment recommendations were made for a seven-year-old child with a growth plan lasting over ten years and, Claimant was not a child with the need for this kind of investment. As a result, there was no meeting of the minds of agreement between the parties upon which a client-broker relationship could be based;
2. Troy Young, Respondent's employee, did not engage in any improper or unethical conduct;
3. Respondent is liable to and shall pay to Claimant rescissory damages in the amount of \$26,563.00;
4. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and
5. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

### 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 = \$ 150.00

#### Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Respondent is a party.

Member surcharge	= \$ 600.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,000.00
Total Member Fees	= \$2,350.00

#### Forum Fees and Assessments

The Arbitrator has assessed forum fees for each session conducted. A 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 a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: February 11, 2005 1 session	
Two (2) Hearing sessions @ \$450.00	= \$ 900.00
Hearing Dates: April 5, 2005 2 sessions	
Total Forum Fees	= \$1,350.00

1. The Arbitrator has assessed \$675.00 of the forum fees to Claimant.
2. The Arbitrator has assessed \$675.00 of the forum fees to Respondent.

#### FEE SUMMARY

1. Claimant is assessed and shall pay the following fees:

Initial Filing Fee	= \$ 150.00
Forum Fees	= \$ 675.00
Total Fees	= \$ 825.00
Less payments	= \$ 675.00
Balance Due NASD Dispute Resolution	= \$ 225.00

2. Respondent is assessed and shall pay the following fees:

Member Fees	= \$2,350.00
Forum Fees	= \$ 675.00
Total Fees	= \$3,025.00
Less payments	= \$2,350.00
Balance Due NASD Dispute Resolution	= \$ 675.00

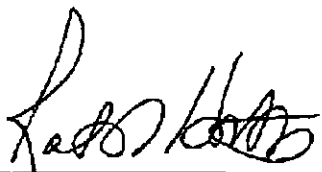
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Robert N. Hunter, Jr., Esq.

- Public Arbitrator, Presiding Panelist

Arbitrator's Signature



Robert N. Hunter, Jr., Esq.  
Public Arbitrator, Presiding Panelist

4/18/05

Signature/Date

April 19, 2005  
Date of Service (For NASD Dispute Resolution office use only)