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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Margie Jones

Case Number: 04-05098

Names of the Respondents  
American General Securities, Inc.  
Leroy Jack Smith

Hearing Site: New Orleans, LA

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

**REPRESENTATION OF PARTIES**

For Margie Jones, hereinafter referred to as "Claimant": Cynthia H. Speetjens, Esq., Cynthia Speetjens, P.A., Madison, MS, Martin E. Willoughby, Jr., Esq., Harrington & Willoughby, PLLC, Madison, MS, and Judson M. Lee, Esq., Judson M. Lee, PLLC, Madison, MS.

For Respondent American General Securities, Inc. ("Securities"): John N. Bolus, Esq. and Kip A. Nesmith, Esq., Maynard, Cooper & Gale, P.C., Birmingham, Alabama.

For Respondent Leroy Jack Smith ("Smith"): E. Britton Monroe, Esq. and Mickey B. Wright, Esq., Lloyd, Gray & Whitehead, P.C., Birmingham, Alabama.

**CASE INFORMATION**

Statement of Claim filed on or about: July 14, 2004.

Claimant signed the Uniform Submission Agreement: July 6, 2004.

Statement of Answer filed by Respondent Securities filed on or about: September 15, 2004.

Respondent Securities signed the Uniform Submission Agreement: September 15, 2004.

Statement of Answer filed by Respondent Smith filed on or about: September 15, 2004.

Respondent Smith signed the Uniform Submission Agreement: October 12, 2004.

Respondent Securities' Motion for Summary Adjudication or, in the Alternative, Motion to Strike filed on or about: April 4, 2005.

Respondent Smith's Motion for Summary Adjudication filed on or about: April 4, 2005.

Claimant's Response in Opposition to Respondents' Motion for Summary Adjudication filed on or about: April 11, 2005.

Respondent Securities' Reply Brief in Support of Motion for Summary Adjudication or, in the Alternative, Motion to Strike filed on or about: April 25, 2005.

Respondent Smith's Reply to Claimant's Opposition to Respondent Smith's Motion for Summary Adjudication filed on or about: April 26, 2005.

**CASE SUMMARY**

Claimant asserted the following causes of action: suitability; breach of fiduciary duty; negligence; breach of contract; common law fraud; misrepresentation; violation of Mississippi

securities laws and rules; and, failure to supervise. The causes of action relate to the Claimant's investments in the Putnam Hartford Capital Manager variable annuity and an Allstate variable annuity composed of unspecified highly speculative stocks.

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

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

### **RELIEF REQUESTED**

Claimant requested actual damages in the amount of \$41,000.00, unspecified punitive damages, interest, costs, attorneys' fees, and such other relief as the undersigned arbitrators (the "Panel") deemed just and proper.

Respondent Securities requested that the Statement of Claim be dismissed in its entirety, and that all costs and forum fees in the case be assessed against Claimant, together with such other and further relief as is deemed just and proper.

Respondent Smith requested that the Panel dismiss all of Claimant's claims with prejudice, expunge the record of Respondent Smith, and award Respondent Smith his attorneys' fees and costs associated with defending this action.

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

On or about April 29, 2005, the Panel issued an order which denied Respondents' Motions for Summary Adjudication as to all issues except those concerning Claimant's cause of action for punitive damages and dismissed, with prejudice, Claimant's cause of action for punitive damages.

During the evidentiary hearing, Respondent Smith filed a Motion to Strike Claimant's Demand for Attorney's Fees and Litigation Expenses. The Panel granted Respondent Smith's Motion.

Respondents moved for directed verdict at the conclusion of Respondents' case in chief on the ground the claims were barred by the applicable Mississippi and federal statutes of limitations. The Panel dismissed Claimant's claims for the variable annuity purchased in June 1999 on the ground the claims were barred by the statute of limitations. Ms. Jones' only remaining claims were with respect to the variable annuity purchased in January 2002.

During the evidentiary hearing, the parties informed the Panel that they had reached a settlement in this matter and requested that a Stipulated Award be entered.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Stipulated Award may be entered.

### **AWARD**

After considering the pleadings, 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:

Claimant's claims against Respondent Smith are dismissed in their entirety with prejudice based on the settlement agreement reached between the parties.

Claimant's claims against Respondent Securities are dismissed in their entirety with prejudice based on the settlement agreement reached between the parties.

Each party shall bear their respective attorneys' fees and other expenses already incurred.

Any and all claims for relief not specifically addressed herein are denied and dismissed with prejudice.

### **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	= \$ 175.00
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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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent Securities is a party and a member firm.

Member surcharge	= \$ 875.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,000.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournment fees assessed during these proceedings.

#### **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:

\$150.00 to Claimant; and,  
\$150.00 to Respondents Securities and Smith, jointly and severally.

#### **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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with the Panel @ \$600.00/session	= \$1,200.00
Pre-hearing conferences:     December 16, 2004     1 session	
April 28, 2005             1 session	
Eight (8) Hearing sessions @ \$600.00/session	= \$4,800.00
Hearing Dates:                 June 28, 2005             2 sessions	
June 29, 2005             2 sessions	
June 30, 2005             3 sessions	
July 1, 2005             1 session	
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Total Forum Fees	= \$6,000.00

Pursuant to the agreement of the parties, the Panel has assessed \$3,000.00 of the forum fees to Claimant and \$3,000.00 of the forum fees to Respondents Securities and Smith, jointly and severally.

**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 assessed during these proceedings.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 175.00
Three Day Cancellation fee	= \$ 150.00
<u>Forum Fees</u>	<u>= \$3,000.00</u>
Total Fees	= \$3,325.00
<u>Less payments</u>	<u>= \$ 775.00</u>
Balance Due NASD Dispute Resolution	= \$2,550.00
2. Respondent Securities is solely liable for:

<u>Member Fees</u>	<u>= \$2,625.00</u>
Total Fees	= \$2,625.00
<u>Less payments</u>	<u>= \$2,625.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00
3. Respondents Securities and Smith are jointly and severally liable for:

Three Day Cancellation fee	= \$ 150.00
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Forum Fees	= \$3,000.00
Total Fees	= \$3,150.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$3,150.00

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

## ARBITRATION PANEL

Jason G. Ourso, Esq.	-	Public Arbitrator, Presiding Chairperson
Thomas L. Maschmeyer, Jr., Esq.	-	Public Arbitrator
Dale A. Kaliszeski	-	Non-Public Arbitrator

### Concurring Arbitrators' Signatures

/s/  
Jason G. Ourso, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

/s/  
Thomas L. Maschmeyer, Jr., Esq.  
Public Arbitrator

Signature Date

/s/  
Dale A. Kaliszeski  
Non-Public Arbitrator

Signature Date

February 13, 2006  
Date of Service (For NASD Dispute Resolution office use only)

Arbitration No. 04-05098  
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<u>Forum Fees</u>	= \$3,000.00
<u>Total Fees</u>	= \$3,150.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$3,150.00

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

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Thomas L. Maschmeyer, Jr., Esq.	-	Public Arbitrator
Dale A. Kaliszeski	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



\_\_\_\_\_  
Jason G. Ourso, Esq.  
Public Arbitrator, Presiding Chairperson

2/10/06  
Signature Date

\_\_\_\_\_  
Thomas L. Maschmeyer, Jr., Esq.  
Public Arbitrator

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

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Dale A. Kaliszeski  
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N.A.S.D. Dispute Resolution

Arbitration No. 04-05098

Stipulated Award Page 5 of 5

Forum Fees	= \$3,000.00
Total Fees	= \$3,000.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$3,000.00

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

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Feb. 9, 2006 10:57AM  
N.A.S.D. Dispute Resolution  
Arbitration No. 04-05098  
Stipulated Award Page 5 of 5

No. 1091 P. 6/6

Forum Fees	= \$3,000.00
Total Fees	= \$3,150.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$3,150.00

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Dale A. Kaliszewski  
Non-Public Arbitrator

2/13/06  
Signature Date

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