

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Names of the Claimants

L.J and Susan S. Whitmire

Case Number: 04-05199

Name of the Respondent

BB&T Investment Services, Inc.

Hearing Site: Charlotte, North Carolina

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Nature of the Dispute: Customers vs. Member.

**REPRESENTATION OF PARTIES**

Claimants, L.J. and Susan S. Whitmire, hereinafter referred to as "Claimants", were represented by Mathew E. Bates, Esq., Mathew E. Bates, P.C., Greensboro, North Carolina.

Respondent, BB&T Investment Services, Inc., hereinafter referred to as "Respondent", was represented by T. Jonathan Adams, Esq., Hamilton, Gaskins, Fay & Moon, P.C., Charlotte, North Carolina.

**CASE INFORMATION**

Statement of Claim filed on July 21, 2004.

Claimants signed the Uniform Submission Agreement on July 14, 2004.

Statement of Answer filed by Respondent on October 4, 2004.

A representative of Respondent executed the Uniform Submission Agreement on September 29, 2004.

**CASE SUMMARY**

In the Statement of Claim, Claimants asserted the following causes of action, among others: failure to supervise, suitability, violation of Section 20 of the Securities Exchange Act of 1934 and *respondeat superior*. The causes of action relate to the purchase and sale of various mutual funds, including but not limited to, AIM Blue Chip Fund, and AIM Global Telecom and Technology Fund.

Unless specifically admitted in its Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses, among others: authorization; ratification; contributory negligence; failure to state a claim upon which relief may be granted; assumption of the risk; Claimants' claims are barred by the doctrines of waiver, estoppel, laches and unclean hands; failure to mitigate damages; and Claimants' claims are barred by the statute of limitations.

### **RELIEF REQUESTED**

Claimants in the Statement of Claim requested:

Compensatory Damages	\$ 381,949.00
Attorney's Fees	amount unspecified
Interest	amount unspecified
Other Costs	amount unspecified

Respondent requested that the Statement of Claim be denied in all respects and that all costs and fees of this proceeding be assessed against Claimant.

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

At the close of Claimants' presentation of evidence, Respondent made an oral motion for directed verdict, which the Arbitration Panel (the "Panel") denied.

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, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims are denied in their entirety;
2. The parties shall bear their respective costs, except as Fees are specifically addressed below;  
and
3. Any and all relief not specifically addressed herein 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	= \$ 300.00
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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. Accordingly, Respondent is a party.

Member surcharge	= \$ 1,700.00
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Pre-hearing process fee	= \$	750.00
Hearing process fee	= \$	2,750.00

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the 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 sessions with Panel @ \$ 1,125.00	= \$	1,125.00
Pre-hearing conference: February 16, 2005 1 session		
Three (3) Hearing sessions @ \$ 1,125.00	= \$	3,375.00
Hearing Dates: January 17, 2006 2 sessions		
January 18, 2006 1 sessions		
<hr/> Total Forum Fees	= \$	<hr/> 4,500.00

1. The Panel has assessed \$ 2,250.00 of the forum fees jointly and severally to Claimants.
2. The Panel has assessed \$ 2,250.00 of the forum fees to Respondent.

**Fee Summary**

1. Claimants are jointly and severally assessed and shall pay:		
Initial Filing Fee	= \$	300.00
Forum Fees	= \$	2,250.00
Total Fees	= \$	2,550.00
Less payments	= \$	1,425.00
Balance Due NASD Dispute Resolution	= \$	1,125.00
2. Respondent is assessed and shall pay:		
Member Fees	= \$	5,200.00
Forum Fees	= \$	2,250.00
Total Fees	= \$	7,450.00
Less payments	= \$	5,200.00
Balance Due NASD Dispute Resolution	= \$	2,250.00


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

**ARBITRATION PANEL**

Patricia Ann Tracey, Esq.  
Glenn A. Clinefelter  
Leslie Robin Berro, CFP

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator, Panelist
- Non-Public Arbitrator, Panelist

**Concurring Arbitrators' Signatures**

  
Patricia Ann Tracey, Esq.  
Public Arbitrator, Presiding Chairperson

1/20/06  
Signature Date

\_\_\_\_\_  
Glenn A. Clinefelter  
Public Arbitrator, Panelist

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

\_\_\_\_\_  
Leslie Robin Berro, CFP  
Non-Public Arbitrator, Panelist

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

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

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Signature Date

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Leslie Robin Berro, CFP  
Non-Public Arbitrator, Panelist

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

January 20, 2006  
Date of Service (For NASD Dispute Resolution office use only)

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Glenn A. Clinefelter	-	Public Arbitrator, Panelist
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JB

January 20, 2006  
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