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

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In the Matter of the Arbitration Between:

Names of the Claimants

John A. Wozniak  
Leanilda M. Wozniak

Case Number: 04-05307

Names of the Respondents

Vestpoint Securities, Inc.  
NowTrade, Corp.  
Charles Keith Byington  
Eric Glenn Hall  
Christopher Pat Winchell

Hearing Site: Boca Raton, Florida

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

**REPRESENTATION OF PARTIES**

For John A. Wozniak ("J. Wozniak") and Leanilda M. Wozniak ("L. Wozniak"), hereinafter collectively referred to as "Claimants": Nicholas J. Taldone, Esq., Law Office of Nicholas J. Taldone, Clearwater, Florida.

For Vestpoint Securities, Inc. and Charles Keith Byington,, hereinafter referred to as "Respondent Vestpoint" and "Respondent Byington": Francis M. Curran, Esq., Akerman Senterfitt, Tampa, Florida.

Respondent NowTrade, Corp. ("NowTrade") did not appear.

Eric Glenn Hall, hereinafter referred to as "Respondent Hall", appeared pro se.

Christopher Pat Winchell, hereinafter referred to as "Respondent Winchell", appeared pro se.

**CASE INFORMATION**

Statement of Claim filed on or about: July 23, 2004.

Claimants signed the Uniform Submission Agreements: July 13, 2004.

Statement of Answer filed by Respondent Vestpoint, Byington, Hall and Winchell on or about: February 28, 2005.

Respondent Vestpoint signed the Uniform Submission Agreement: April 28, 2005.

Respondent NowTrade did not file an Answer or Uniform Submission Agreement.

Respondent Byington signed the Uniform Submission Agreement: May 2, 2005.

Respondent Hall did not file an executed Uniform Submission Agreement.

Respondent Winchell did not file an executed Uniform Submission Agreement.

Motion to Dismiss filed by Respondents Vestpoint and Byington on or about: February 28, 2005.  
Response to Motion to Dismiss and Motion for Leave to Amend Statement of Claim filed by Claimants on or about: March 10, 2005.

Amended Statement of Claim filed by Claimants on or about: March 10, 2005.

Response to Amended Statement of Claim filed by Respondents Vestpoint and Byington on or about: April 9, 2005.

Respondent Hall and Respondent Winchell did not file an Answer to the Amended Statement of Claim.

Renewed Motion to Dismiss filed by Respondents Vestpoint and Byington on or about: August, 2005.

### **CASE SUMMARY**

Claimants asserted the following causes of action: misrepresentation; omission of facts; breach of fiduciary duty; unsuitability; failure to supervise; respondeat superior; violation of NASD Rule 2110(d)(1); and, violation of Chapter 517.301 of the Florida Securities and Investor Protection Act. The causes of action relate to Claimants' investments in, including but limited to, viatical investment products issued by Mutual Benefits Corporation and five ten-year fixed annuities.

Unless specifically admitted in their initial Answer, Respondents Vestpoint, Byington, Hall and Winchell denied the allegations made in the Statement of Claim and asserted various affirmative defenses. Additionally, in their Amended Answer, Respondents Vestpoint and Byington denied the allegations made in the Amended Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$280,655.00; rescissionary damages pursuant to Section 517.211(3), including statutory interest at the prevailing rate; costs, expenses and disbursements; reasonable attorneys' fees; expert witness fees; punitive damages; and, such other relief as the undersigned arbitrators (the "Panel") deemed just and proper.

In their Answers, Respondents Vestpoint, Byington, Hall and Winchell did not specifically delineate relief requests.

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

Upon review of the file and the representations made by/on behalf of Claimants, the Panel determined that Respondent NowTrade has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

When the initial Statement of Answer was filed on or about February 29, 2005, Francis M. Curran, Esq. represented Respondents Vestpoint, Byington, Hall and Winchell. On or about April 13, 2005, Francis M. Curran, Esq. withdrew as attorney of record for Respondents Hall and Winchell. Thereafter, Respondents Hall and Winchell appeared pro se.

Respondent Hall and Respondent Winchell did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and, having answered the claim and appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

Claimants asserted claims against a non-member whose submission to the jurisdiction of NASD Dispute Resolution was voluntary. The non-member declined to voluntarily submit to the jurisdiction of NASD Dispute Resolution.

During the initial telephonic pre-hearing conference held on March 24, 2005, the Panel granted Claimants' Motion to Amend. Additionally, Respondents Vestpoint and Byington withdrew their initial Motion to Dismiss.

At the outset of the evidentiary hearing, Claimants advised the Panel that they withdrew all claims for transactions other than the purchase of Mutual Benefits Corporation's viatical and life settlement products. Additionally, Claimants advised the Panel that they had settled with Respondent Hall and Respondent Winchell, but would not dismiss them until after they had given testimony. Thereafter, at the close of Claimants' case, Claimants dismissed Respondent Hall and Respondent Winchell from this matter, with prejudice.

During the evidentiary hearing, Respondent Byington made an ore tenus motion to expunge all references to this matter from his NASD Central Registration Depository ("CRD") record. The Panel denied Respondent Byington's motion.

### 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:

The Panel accepts Claimants' dismissal, with prejudice, of Respondent Hall and Respondent Winchell.

Claimants are awarded relief under Chapter 517 of the Florida Statutes, in the form of rescission of the five Mutual Benefits Corporation viatical settlement contracts at issue, jointly and severally against Respondents Byington and NowTrade as follows: Respondents Byington and NowTrade shall pay Claimants the total purchase price of \$250,000.00 plus interest as set forth below. There shall be a setoff of \$5,000.00 from the purchase price, which represents settlement funds paid to Claimants by Respondents Hall and Winchell. Upon receipt of the purchase price, Claimants shall tender the five Mutual Benefits Corporation viatical settlement contracts back to Respondents Byington and NowTrade.

Claimants are awarded interest under Chapter 517 of the Florida Statutes, jointly and severally against Respondents Byington and NowTrade in the total amount of \$52,341.09, calculated at the applicable legal rate from the date of purchase through October 31, 2005.

Claimants' request for attorneys' fees is granted, pursuant to Chapter 517.211(6) of the Florida Statutes, with the amount to be determined by a court of competent jurisdiction.

Respondent Byington and Respondent NowTrade shall jointly and severally pay to Claimants'

the sum of \$300.00, representing reimbursement of the non-refundable claim filing fee previously paid by Claimants to NASD Dispute Resolution.

Claimants' claims against Respondent Vestpoint are dismissed, with prejudice.

Claimants' request for punitive damages is denied

Any and all claims for relief not specifically addressed herein are 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 = \$ 300.00

#### **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 Vestpoint is a member firm and a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$2,750.00</u>
Total Member Fees	= \$5,200.00

NowTrade is not a member firm of NASD and was not at the time of service of the Statement of Claim. In as much as NowTrade did not participate in this proceeding, no member fees are assessed to NowTrade.

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were incurred in this matter.

#### **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:

No three-day cancellation fees were incurred in this matter.

#### **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.

No injunctive relief fees were incurred in this matter.

**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:

Three (3) Pre-hearing sessions with the Panel @ \$1,125.00/session = \$ 3,375.00

Pre-hearing conferences:      March 24, 2005      1 session  
   August 25, 2005      1 session  
   December 15, 2005      1 session

Six (6) Hearing sessions @ \$1,125.00/session = \$ 6,750.00

Hearing Dates:      January 9, 2006      2 sessions  
                                 January 10, 2006      1 session  
                                 January 11, 2006      2 sessions  
                                 January 12, 2006      1 session

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Total Forum Fees = \$10,125.00

The Panel assessed the total forum fees of \$10,125.00 to Respondent Byington and Respondent NowTrade, 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.

No administrative costs were incurred in this matter.

**Fee Summary**

Claimants are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 300.00
<u>Total Fees</u>	= \$ 300.00
<u>Less payments</u>	= \$ 300.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Respondent Vestpoint is solely liable for:

<u>Member Fees</u>	= \$ 5,200.00
<u>Total Fees</u>	= \$ 5,200.00
<u>Less payments</u>	= \$ 5,200.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Respondents Byington and NowTrade are jointly and severally liable for:

<u>Forum Fees</u>	= \$10,125.00
<u>Total Fees</u>	= \$10,125.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$10,125.00

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

**ARBITRATION PANEL**

Nancy J. Cliff, Esq.	-	Public Arbitrator, Presiding Chairperson
Monica I. Salis, Esq.	-	Public Arbitrator
Lili Ann Alboum	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
Nancy J. Cliff, Esq.  
Public Arbitrator, Presiding Chairperson

January 18, 2006  
Signature Date

/s/  
Monica I. Salis, Esq.  
Public Arbitrator

January 19, 2006  
Signature Date

/s/  
Lili Ann Alboum  
Non-Public Arbitrator

January 18, 2006  
Signature Date

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

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ARBITRATION PANEL

Nancy J. Cliff, Esq.  
Monica I. Salis, Esq.  
Lili Ann Albourn

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

Concurring Arbitrators' Signatures

  
Nancy J. Cliff, Esq.  
Public Arbitrator, Presiding Chairperson

1/18/06  
Signature Date

Monica I. Salis, Esq.  
Public Arbitrator

Signature Date

Lili Ann Albourn  
Non-Public Arbitrator

Signature Date

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

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1/17/06  
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Public Arbitrator

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Signature Date

Lili Ann Albourn  
Lili Ann Albourn  
Non-Public Arbitrator

11/18/06  
Signature Date

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