

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

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In the Matter of the Arbitration Between:

Robert C. Rachel (Claimant) vs. Donna Sulzbach and Vestax Securities Corp. n/k/a Multi-Financial Securities Corp. (Respondents)

Case Number: 04-05356

Hearing Site: Cleveland, Ohio

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

**REPRESENTATION OF PARTIES**

Claimant Robert C. Rachel hereinafter referred to as "Claimant": John S. Chapman, Esq., Cleveland, OH.

Respondents Donna Sulzbach ("Sulzbach") and Vestax Securities Corp. n/k/a Multi-Financial Securities Corp. ("Multi-Financial"), hereinafter collectively referred to as "Respondents": Jonathan W. Philipp Esq., Janik & Dorman, LLP, Cleveland, OH.

**CASE INFORMATION**

Statement of Claim filed on or about: July 20, 2004.

Claimant signed the Uniform Submission Agreement: July 16, 2004.

Joint Statement of Answer filed by Respondents on or about: October 29, 2004.

Respondent Sulzbach signed the Uniform Submission Agreement: October 1, 2004.

Respondent Multi-Financial did not submit a signed Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: unsuitability, negligence, failure to supervise, and breach of fiduciary duty. The causes of action relate to Jackson National Life Insurance Company annuity.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$170,786.39, exemplary damages in the amount of \$200,000.00, attorneys' fees, forum fees, expert witness fees, interest, and such other and further relief as the arbitrators determine to be reasonable and just.

Respondents requested that the Statement of Claim be dismissed in its entirety.

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

Respondent Multi-Financial did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

At the hearing, Respondents made a Motion for Directed Verdict at the close of Claimant's case. After due deliberation, the Panel denied the Motion.

The parties have 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. Respondents are jointly and severally liable for and shall pay to Claimant compensatory damages in the amount of \$148,562.80, plus interest at a rate of 7% per annum from March 1, 2001 to date of payment of the award.
2. Respondents are jointly and severally liable for and shall pay to Claimant punitive damages in the amount of \$133,700.00. The Panel awarded punitive damages because Respondent Salzbach's conduct demonstrated a conscious disregard for the rights of Claimant. Respondent's conduct had a great probability of causing substantial harm in accordance with Cabe v. Lunich (1994), 70 Ohio St.3d 598, 1994-Ohio 4 and Preston v. Murty (1987), 32 Ohio St.3d 334.
3. Any and all relief not specifically addressed herein is 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, Vestax Securities Corp. n/k/a Multi-Financial Securities Corp is a party.

Member surcharge	= \$ 1,700.00
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 or each decision rendered on a discovery-related motion on the papers. 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 = \$ 900.00  
Pre-hearing conferences: January 4, 2006 1 session  
October 14, 2005 1 session

Two (2) Pre-hearing sessions with Panel @ \$1,125.00 = \$ 2,250.00  
Pre-hearing conferences: February 8, 2005 1 session  
September 19, 2005 1 session

Six (6) Hearing sessions @ \$1,125.00 = \$ 6,750.00  
Hearing Dates: February 8, 2006 2 sessions  
February 9, 2006 2 sessions  
February 10, 2006 2 sessions

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Total Forum Fees = \$ 9,900.00

1. The Panel has assessed \$9,900.00 of the forum fees jointly and severally to Respondents.

**Fee Summary**

1. Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 300.00
Total Fees	= \$ 300.00
<u>Less payments</u>	= \$ 1,425.00
Refund Due Claimant	= \$ 1,125.00

2. Respondent Multi-Financial is solely liable for:

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

3. Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 9,900.00
Total Fees	= \$ 9,900.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 9,900.00

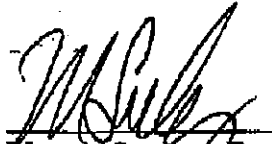
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Marc A. Sanchez, Esq.  
Sanford Heiser  
Howard A. Slater, MBA

Public Arbitrator, Presiding Chairperson  
Public Arbitrator  
Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
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Marc A. Sanchez, Esq.  
Public Arbitrator, Presiding Chairperson

2-20-06  
Signature Date

\_\_\_\_\_  
Sanford Heiser  
Public Arbitrator

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

\_\_\_\_\_  
Howard A. Slater, MBA  
Non-Public Arbitrator

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

February 23, 2006  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

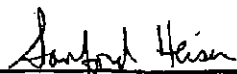
Marc A. Sanchez, Esq.  
Sanford Heiser  
Howard A. Slater, MBA

Public Arbitrator, Presiding Chairperson  
Public Arbitrator  
Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Marc A. Sanchez, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

  
Sanford Heiser  
Public Arbitrator

2-17-06  
Signature Date

Howard A. Slater, MBA  
Non-Public Arbitrator

Signature Date

February 23, 2006  
Date of Service (For NASD Dispute Resolution use only)