

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

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In the Matter of the Arbitration Between:

Salvatore L. Genualdo, IRA, Mary S. Genualdo, IRA, and Salvatore L. and Mary S. Genualdo (Claimants) vs. Commonwealth Financial Network a/k/a Commonwealth Equity Services, Inc. and Nicholas Giacomakis (Respondents)

Case Number: 04-08120

Hearing Site: Boston, Massachusetts

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

**REPRESENTATION OF PARTIES**

Claimants Salvatore L. Genualdo, IRA ("S. Genualdo IRA"); Mary S. Genualdo, IRA ("M. Genualdo, IRA") and Salvatore L. and Mary S. Genualdo ("Genualdo JNT") hereinafter collectively referred to as "Claimants": Lewis W. Berk, Esq., and Paul M. Glickman, Esq., Glickman Turley, LLP, Boston, MA.

Respondents Commonwealth Financial Network a/k/a Commonwealth Equity Services, Inc. ("Commonwealth") and Nicholas Giacomakis ("Giacomakis") hereinafter collectively referred to as "Respondents": Steven L. Manchel, Esq., Elliot C. Fertick, Esq., and Christine Fitzgerald, Esq., Manchel & Brennan, Newton, MA.

**CASE INFORMATION**

Statement of Claim filed on or about: November 23, 2004.  
S. Genualdo IRA signed the Uniform Submission Agreement: November 8, 2004.  
M. Genualdo, IRA signed the Uniform Submission Agreement: November 8, 2004.  
Genualdo JNT signed the Uniform Submission Agreement: November 8, 2004.

Statement of Answer filed by Respondents on or about: February 7, 2005.  
Commonwealth signed the Uniform Submission Agreement: February 16, 2005.  
Giacomakis signed the Uniform Submission Agreement: February 22, 2005.

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of fiduciary duty, negligence, failure to supervise, misrepresentations/non-disclosure and suitability.

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

### **RELIEF REQUESTED**

Claimants requested compensatory damages in excess of \$462,500.00 plus interest, costs including filing fees and attorneys' fees.

Respondents requested that: 1) all claims against Respondents should be dismissed with prejudice and an award entered in their favor; 2) award of costs incurred in this action, including attorneys' fees; and 3) Mr. Giacomakis's U-4 be expunged of any reference to the Claimants' Claims.

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

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 Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Nicholas Giacomakis' registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Nicholas Giacomakis must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130, the arbitration panel has made the following affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; and

The claim, allegation, or information is false.

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, Commonwealth Financial Network a/k/a Commonwealth Equity Services, Inc. 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:

One (1) Decision on discovery-related motion on the papers  
with one (1) arbitrator at \$200.00 = \$ 200.00

Claimants submitted One (1) discovery related motion

One (1) Pre-hearing session with a single arbitrator @ \$450.00 per session = \$ 450.00  
Pre-hearing conference: September 29, 2005 1 session

Three (3) Pre-hearing sessions with Panel @ \$1,125.00 per session = \$ 3,375.00  
Pre-hearing conferences: April 8, 2005 1 session  
November 22, 2005 1 session  
November 29, 2005 1 session

Seven (7) Hearing sessions @ \$1,125.00 per session = \$ 7,875.00  
Hearing Dates: December 6, 2005 2 sessions  
December 7, 2005 2 sessions  
December 8, 2005 1 session  
February 14, 2006 2 sessions

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Total Forum Fees = \$ 11,900.00

1. The Panel has assessed \$5,950.00 of the forum fees jointly and severally to Claimants.
2. The Panel has assessed \$5,950.00 of the forum fees jointly and severally to Respondents.

### Fee Summary

1. Claimants are liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 5,950.00
Total Fees	= \$ 6,250.00
Less payments	= \$ 2,125.00
Balance Due NASD Dispute Resolution	= \$ 4,125.00

2. Respondent Commonwealth is solely liable for:

Member Fees	= \$ 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>	= \$ 5,950.00
Total Fees	= \$ 5,950.00
<u>Less payments</u>	= \$ .00
Balance Due NASD Dispute Resolution	= \$ 5,950.00

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

**ARBITRATION PANEL**

Denise L. Presley, Esq.

Lucy J. Karl, Esq.

Robert L. Barker

- Public Arbitrator, Presiding Chairperson

- Public Arbitrator

- Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Denise L. Presley, Esq.

Public Arbitrator, Presiding Chairperson

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

Lucy J. Karl

Lucy J. Karl, Esq.

Public Arbitrator

3-2-06  
Signature Date

\_\_\_\_\_  
Robert L. Barker

Non-Public Arbitrator

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

March 7, 2006

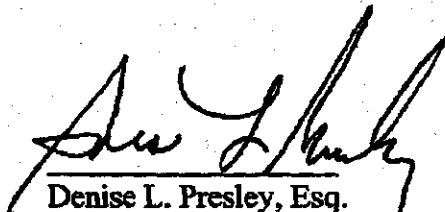
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

Denise L. Presley, Esq.  
Lucy J. Karl, Esq.  
Robert L. Barker

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

**Concurring Arbitrators' Signatures**



Denise L. Presley, Esq.  
Public Arbitrator, Presiding Chairperson

3-2-06  
Signature Date

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Lucy J. Karl, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Robert L. Barker  
Non-Public Arbitrator

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

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### Forum Fees

Respondents and Claimants will split forum fees 50/50. Had Respondent Commonwealth maintained adequate records of conversations with Claimants this case could have been dismissed much earlier. Each party will bear the cost of their own attorney's fees.

### Concurring Arbitrator's Signatures

I, we, the undersigned arbitrators, do hereby affirm, pursuant to NASD rules, that I am the individual(s) described herein and who executed this instrument which is my/our award.

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Denise L. Presley, Esq.  
Public Arbitrator, Chair

\_\_\_\_\_  
Date

3/3/06

\_\_\_\_\_  
Robert L. Barker, Industry Arbitrator

\_\_\_\_\_  
Date

\_\_\_\_\_  
Lucy J. Karl, Esq., Public Arbitrator

\_\_\_\_\_  
Date

March 7, 2006

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Date of Service (NASD Dispute Resolution use only)