

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

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In the Matter of the Arbitration Between:

Rose Marie Simak, as Executrix of The Estate of Frances Rose Nardillo (Claimant) vs. Nationwide Securities d/b/a Nationwide Advisory Services, Inc., and Francis J. Sherman (Respondents)

Case Number: 04-08841

Hearing Site: Cleveland, Ohio

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

**REPRESENTATION OF PARTIES**

Rose Marie Simak, as Executrix of The Estate of Frances Rose Nardillo hereinafter referred to as "Claimant": James B. Davis, Esq., James B. Davis Attorney At Law, Newbury, OH.

Respondents Nationwide Securities d/b/a Nationwide Advisory Services, Inc. ("Nationwide") and Francis J. Sherman ("Sherman") hereinafter collectively referred to as "Respondents": Natalie C. Trishman, Esq., Bricker and Eckler, LLP, Columbus, OH.

**CASE INFORMATION**

Statement of Claim filed on or about: December 29, 2004.

Claimant signed the Uniform Submission Agreement: February 3, 2005.

Joint Statement of Answer filed by Respondents on or about: April 6, 2005.

Motion to Dismiss filed by Respondents on or about: April 6, 2005.

Nationwide signed the Uniform Submission Agreement: March 14, 2005.

Sherman signed the Uniform Submission Agreement: May 5, 2005.

**CASE SUMMARY**

Claimant asserted the following causes of action: negligence, failure to diversify, and suitability. The causes of action relates to Nationwide Growth Fund D.

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 \$40,486.87 plus interest, costs, expenses, reasonable attorneys' fees, and assessment of forum fees against Respondents.

Respondents requested dismissal of the Statement of Claim in its entirety.

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

A telephonic pre-hearing conference was held on September 26, 2005, during which the Arbitrator heard oral arguments on Respondents' Motion to Dismiss. After due deliberation, the Arbitrator granted Respondents' Motion to Dismiss.

### **AWARD**

After considering the pleadings and Respondents' Motion to Dismiss, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are dismissed in their entirety.
2. 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	= \$	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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Nationwide Securities d/b/a Nationwide Advisory Services, Inc. is a party.

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

#### **Forum Fees and Assessments**

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

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00/session	= \$	900.00
Pre-hearing conference: June 22, 2005	1 session	
September 26, 2005	1 session	
Total Forum Fees	= \$	900.00

1. The Arbitrator has assessed \$450.00 of the forum fees to Claimant.
2. The Arbitrator has assessed \$450.00 of the forum fees to Nationwide.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$	175.00
<u>Forum Fees</u>	= \$	<u>450.00</u>
Total Fees	= \$	625.00
<u>Less payments</u>	= \$	<u>625.00</u>
Balance Due NASD Dispute Resolution	= \$	0.00

2. Respondent Nationwide is solely liable for:

Member Fees	= \$	2,625.00
<u>Forum Fees</u>	= \$	<u>450.00</u>
Total Fees	= \$	3,075.00
<u>Less payments</u>	= \$	<u>2,625.00</u>
Balance Due NASD Dispute Resolution	= \$	450.00

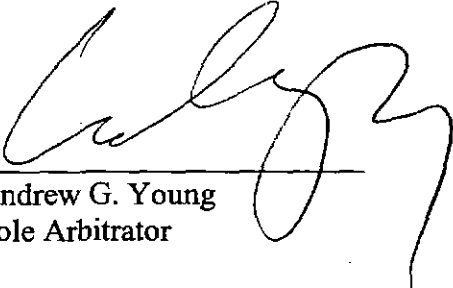
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATOR**

Andrew G. Young

- Sole Arbitrator

**Arbitrator's Signature**

A handwritten signature in black ink, appearing to read 'A. G. Young', written over a horizontal line.

Andrew G. Young  
Sole Arbitrator

A handwritten date '2/10/06' in black ink, written over a horizontal line.  
Signature Date

**February 17, 2006**

Date of Service (For NASD Dispute Resolution use only)