

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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Paul Jones

Case Number: 05-00107

Name of the Respondents  
D.E. Frey & Company, Inc.;  
The (Wilson) Williams Financial Group;  
Lewis & Lewis Securities, Inc.;  
Ronald E. Lewis; and,  
America Skandia Marketing, Inc.

Hearing Site: Dallas, Texas

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**NATURE OF THE DISPUTE**

Public Customer vs. Member Firms, Non-Member Firm and Associated Persons

**REPRESENTATION OF PARTIES**

Claimant Paul Jones, hereinafter referred to as "Claimant": John Brooks, Esq., of the Law Offices of Brooks & Campbell, L.L.P., located in Wichita Falls, Texas.

Respondent D.E. Frey & Company, Inc. did not appear.

Respondent The (Wilson) Williams Financial Group, hereinafter referred to as "WFG": David B. Dyer, Esq. of the firm of Secore & Waller, L.L.P., located in Dallas, Texas.

Respondent Lewis & Lewis Securities, Inc. ("L and L") and Ronald E. Lewis ("R. Lewis"): Ronald E. Lewis of Tuscola, Texas.

Respondent America Skandia Marketing, Inc., hereinafter referred to as "ASM": Fred N. Knopf, Esq. and Jessica Longobardi, Esq. of the firm of Wilson, Elser, Moskowitz, Edelman & Dicker LLP, located in White Plains, New York.

**CASE INFORMATION**

Statement of Claim filed: January 7, 2005.

Claimant signed the Uniform Submission Agreement: December 15, 2004.

First Amended Statement of Claim filed on: June 27, 2005.

Claimant's Response to Respondent ASM's Motion to Dismiss filed on: February 27, 2006.

Claimant's Trial Brief filed on: April 14, 2006.

Respondent D.E. Frey & Company, Inc. did not file a Statement of Answer or a signed Uniform Submission Agreement.

Statement of Answer filed by Respondent WFG on: June 7, 2005.  
Respondent WFG did not file a signed Uniform Submission Agreement.

Statement of Answer filed by Respondents L & L and R. Lewis on: June 1, 2005.  
Respondent Land L signed the Uniform Submission Agreement: May 27, 2005.  
Respondent R. Lewis signed the Uniform Submission Agreement: May 27, 2005.  
Respondent R. Lewis filed Notice of Bankruptcy on: October 7, 2005.

Statement of Answer and Motion to Dismiss filed by Respondent ASM on: August 30, 2005  
Respondent ASM signed the Uniform Submission Agreement: October 25, 2005.  
Respondent ASM's Pre-Hearing brief filed on: May 1, 2006.

### **CASE SUMMARY**

Claimant asserted the following causes of action: unsuitable recommendations; negligence; breach of contract; gross negligence; misrepresentation/failure to disclose; violation of the Texas Deceptive Trade Practices Act; violation of the Texas Business and Commerce Code; violation of the Texas Securities Act; breach of fiduciary duty; and, failure to supervise. These causes of action relate to the investment of Claimant's retirement funds into a variable annuity and other transactions.

Unless specifically admitted in its Answer, Respondent WFG denied the allegations made in the Statement of Claim, stating that the variable annuity was purchased months before Claimant's account became associated with WFG. The claims against WFG were withdrawn upon the filing of the Amended Statement of Claim.

Unless specifically admitted in their Answer, Respondents L & L and R. Lewis denied the allegations made in the Statement of Claim and asserted the following defenses:

1. The Statement of Claim fails to state a claim upon which relief can be granted;
2. The Claimant assumed the risk of loss;
3. All losses in the Claimant's accounts were caused by the Claimant's own knowing, voluntary and ongoing investment decisions, or market forces beyond Respondents' control;
4. The claims are barred by the doctrines of estoppel and laches;
5. The claims are barred in whole or in part by applicable statutes of limitations;
6. The Claimant was aware of and knowingly undertook the risks attendant to the kinds of investments made for their accounts;

7. The Claimant's accounts were in accordance with applicable regulatory requirements and brokerage industry standards and guidelines;
8. The Claimant's claims based on alleged negligence are barred, in whole or in part, by their contributory negligence; and,
9. Respondents at all times acted in good faith.

Unless specifically admitted in its Answer, Respondent ASM denied the allegations made in the Statement of Claim and asserted the following defenses:

1. The Statement of Claim fails to state a claim upon which relief can be granted;
2. Claimant failed to mitigate the alleged damages;
3. Claimant has suffered no damages by reason of the acts complained of in the Statement of Claim;
4. Claimant voluntarily and knowingly accepted and assumed all the attendant risks associated with the subject investment and should be barred from recovery;
5. To the extent the Claim seeks damages for violation of a NASD or NYSE rule, or an internal policy or procedure, the alleged violation of the rules of any self-regulatory agency or internal policy or procedure does not give rise to a private right of action;
6. The Claimant fails to state a claim upon which relief can be granted for an alleged breach of fiduciary duty because there exists no per se fiduciary duty between broker and customer;
7. Claimant is not entitled to an award of attorneys' fees, punitive damages, interest or the cost of the instant proceeding; and,
8. Claimant's losses were caused by the conduct or negligence of third parties or entities, over whom and which ASM has no control.

### **RELIEF REQUESTED**

Claimant Paul Jones requested:

Compensatory Damages	\$700,000.00
Interest	Pre-judgment interest to the date of the Award
Attorneys' Fees	As determined by the Panel
Other Costs	Including expert witness fees, filing and forum fees
Other Monetary/Non-Monetary Relief if any:	Rescission of purchase of the variable annuity; disgorgement of all commissions and fees paid; and, such further relief as the Panel deemed proper.

Respondent WFG requested that the claims be dismissed.

Respondents Lewis & Lewis Securities, Inc. and Ronald E. Lewis requested that the Claim be dismissed.

Respondent America Skandia Marketing, Inc., requested that the Claimant's Statement of Claim be dismissed in its entirety; that it be awarded attorneys' fees and costs; and that all costs be assessed against the Claimant.

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

On June 27, 2005, Claimant filed an Amended Statement of Claim. The Amended Statement of Claim omitted The (Wilson) Williams Financial Group as a Respondent, omitted Martha Jones as a Claimant, and added American Skandia Marketing, Inc. as a Respondent. Therefore, the claims against The (Wilson) Williams Financial Group were withdrawn.

On March 16, 2006, the Panel heard argument on Respondent ASM's Motion to Dismiss. After deliberation, on March 17, 2006, the Panel entered an Order denying the Motion without prejudice and allowing ASM to renew its Motion after completion of discovery by all parties.

On March 17, 2006, Respondent ASM renewed its Motion to Dismiss at the conclusion of Claimant's case. After consideration of the pleadings filed by the parties, the arguments presented by counsel, the testimony of Claimant's witnesses, and the exhibits admitted into evidence, the Panel granted Respondent America Skandia Marketing, Inc.'s Motion to Dismiss and they were dismissed from this matter with prejudice.

On May 18, 2006, Claimant filed a formal request for a ruling against Respondents D.E. Frey & Company, Inc., Lewis & Lewis Securities, Inc., and Ronald E. Lewis. On May 26, 2006, the Panel reconvened and considered Claimant's request and made the rulings and Awards below.

Upon review of the file and the representations made on behalf of the Claimant, the Panel determined that Respondent D.E. Frey & Company, Inc. was not properly served with the Statement of Claim and did not receive due notice of the hearing. Therefore, the Panel determined that the claims against D.E. Frey & Company, Inc. are dismissed without prejudice.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Lewis & Lewis Securities, Inc. is liable for and shall pay to the

Claimant, Paul Jones, the sum of \$43,750.00 as compensatory damages, plus interest at the rate of 5% per annum accruing from March 31, 2000 through May 15, 2006;

2. In addition, Respondent Lewis & Lewis Securities, Inc. is liable for and shall pay to the Claimant, Paul Jones, the sum of \$81,126.00 in attorneys' fees. In deciding to award attorneys' fees, the Panel considered the pleadings and evidence submitted by the Claimant, and determined that authority existed for an award of attorneys' fees to the Claimant;
3. The claims against Respondent D.E. Frey & Company, Inc. are dismissed without prejudice;
4. The claims against Respondent America Skandia Marketing, Inc. are dismissed with prejudice;
5. Pursuant to the bankruptcy stay, no action was taken in regard to the claims against Ronald E. Lewis;
6. The parties shall bear their own costs of arbitration, including any additional attorneys' fees, except for those sums specifically enumerated herein; and,
7. 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	= \$ 375.00
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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, both The (Wilson) Williams Financial Group and America Skandia Marketing, Inc. are a party to this arbitration and the following member fees are assessed:

<u>The (Wilson) Williams Financial Group</u>	
Member surcharge	= \$ 2,250.00
Pre-hearing process fee	= \$ 750.00

<u>America Skandia Marketing, Inc.</u>	
Member surcharge	= \$ 2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 4,000.00

### Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed: None.

## 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:

Two (2) Pre-hearing sessions with Panel @ \$1,200.00	= \$ 2,400.00
Pre-hearing conferences:   October 18, 2005   1 session	
March 16, 2006   1 session	
Five (5) Hearing sessions @ \$1,200.00	= \$ 6,000.00
Hearing Dates:               May 15, 2006   2 sessions	
May 16, 2006   2 sessions	
May 17, 2006   1 session	
<b>Total Forum Fees</b>	<b>= \$ 8,400.00</b>

The Panel has assessed \$4,200.00 of the forum fees to the Claimant, Paul Jones, and the remaining \$4,200.00 of the forum fees to Respondent America Skandia Marketing, Inc.

## FEE SUMMARY

Claimant Paul Jones is solely liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 4,200.00
Total Fees	= \$ 4,575.00
Less payments	= \$ 1,575.00
Balance Due NASD Dispute Resolution	= \$ 3,000.00

Respondent The (Wilson) Williams Financial Group is solely liable for:

Member Fees	= \$ 3,000.00
Less payments	= \$ 3,000.00
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

**Respondent America Skandia Marketing, Inc. is solely liable for:**


Member Fees	= \$ 7,000.00
Forum Fees	= \$ 4,200.00
<b>Total Fees</b>	<b>= \$11,200.00</b>
<b>Less payments</b>	<b>= \$ 7,000.00</b>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 4,200.00</b>

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

**ARBITRATION PANEL**

Donna Ross Philip, Esq. - Public Arbitrator, Presiding Chairperson  
Patricia B. Lehtola, Esq. - Public Arbitrator  
Melody A. Pruser - Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Donna Ross Philip, Esq.  
Public Arbitrator, Presiding Chairperson

6-06-06  
Signature Date

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Patricia B. Lehtola, Esq.  
Public Arbitrator

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Signature Date

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Melody A. Pruser  
Non-Public Arbitrator

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Signature Date

6/6/06 Mm  
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution  
Arbitration No. 05-00107  
Award Page 7

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Donna Ross Philip, Esq.  
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Signature Date

  
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Patricia B. Lehtola, Esq.  
Public Arbitrator

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Signature Date

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Melody A. Pruser  
Non-Public Arbitrator

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Signature Date

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