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

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In the Matter of the Arbitration Between:

Name of the Claimant

Brandt Family Trust Dtd 10/4/00,  
Irmgard Brandt and Ruediger W. Brandt as Trustees

Case Number: 05-00142

Names of the Respondents

Paul S. Barnes  
Veravest Investments, Inc.  
Allmerica Financial Life Insurance and Annuity Company

Hearing Site: Boca Raton, Florida

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

**REPRESENTATION OF PARTIES**

For Brandt Family Trust Dtd 10/4/00, Irmgard Brandt and Ruediger W. Brandt as Trustees, hereinafter collectively referred to as "Claimants": Irmgard and Ruediger Brandt, Trustees.

Respondent Paul S. Barnes ("Barnes") appeared pro se.

For Respondents Veravest Investments, Inc. ("Veravest") and Allmerica Financial Life Insurance and Annuity Company ("Allmerica"): Christine R. Fitzgerald, Esq., Manchel & Brennan, P.C., Newton, Massachusetts.

**CASE INFORMATION**

Statement of Claim filed on or about: January 11, 2005.

Claimants signed the Uniform Submission Agreements: January 10, 2005.

Statement of Answer and Counterclaim filed by Respondent Barnes on or about: May 9, 2005.

Respondent Barnes signed the Uniform Submission Agreement: May 5, 2005.

Statement of Answer filed jointly by Respondents Veravest and Allmerica on or about: May 11, 2005.

Respondent Allmerica signed the Uniform Submission Agreement: April 12, 2005.

Respondent Veravest signed the Uniform Submission Agreement: May 24, 2005.

Motion to Dismiss and Memorandum of Law in Support of Motion to Dismiss filed jointly by Respondents Allmerica and Veravest on or about: November 15, 2005.

Response to Motion to Dismiss filed by Claimants on or about: November 18, 2005.

**CASE SUMMARY**

Claimants asserted that Respondents ignored their investment desires, misled them, and made unsuitable investments in their account. The causes of action relate to the purchase in Claimants' account of an Allmerica Select variable annuity.

Unless specifically admitted in his Answer, Respondent Barnes denied the allegations made in the Statement of Claim and asserted a counterclaim for damages based upon lost wages and irreparable harm done to his career.

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

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of approximately \$74,990.95 and punitive damages in the amount of \$225,000.00.

Respondent Barnes requested compensatory damages in the amount of \$9,000.00, representing lost wages based upon the amount of time spent away from business activities to respond to the Statement of Claim, and additional damages in the amount of \$90,000.00, resulting from the [alleged] irreparable harm done to his career.

Respondents Veravest and Allmerica requested judgment in their favor.

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

Respondent Allmerica is not presently a member firm of NASD. However, at the time of the events giving rise to the dispute, Respondent Allmerica was a member firm of NASD. Accordingly, Respondent Allmerica is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having filed an executed Uniform Submission Agreement and answered the claim, is bound by the determination of the Panel on all issues submitted.

Respondents Veravest and Allmerica filed a motion to dismiss in which they asserted that Claimants' Statement of Claim fails, as a matter of law, to state any causes of action. In their response, Claimants stated that Respondents Veravest and Allmerica waived their right to dismissal prior to the evidentiary hearing because they did not raise and identify the issues presented in their motion to dismiss during the initial pre-hearing conference. On or about November 22, 2005, the Panel issued an Order dismissing, with prejudice, Respondents Veravest and Allmerica from this matter.

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 and 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 finds total losses after Claimants' withdrawals equaled \$56,621.15, calculated as follows:

Original Investments: \$5,500.00 and \$135,972.34 = \$141,472.34  
Withdrawals by Claimants: \$28,458.28  
Account Balance as of 12/31/04: \$56,392.91

Total Losses: \$56,621.15

The Panel finds Claimants and Respondent Barnes equally complicit in creating the losses, due to Respondent Barnes' misallocation and mismanagement of the account and the relationship, as well as Claimants' negligence.

Therefore, the Panel finds Respondent Barnes liable on the claim of unsuitability. Respondent Barnes shall pay compensatory damages to Claimants in the amount of \$28,310.57, representing one-half of the total losses.

Respondent Barnes' counterclaim is denied in its entirety.

Any and all claims for relief not specifically addressed herein, including Claimants' request for punitive damages, 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
Counterclaim filing fee	= \$ 225.00

#### Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person at the time of the events giving rise to the dispute. Accordingly, member fees are assessed to the following entities: Respondent Veravest; Respondent Allmerica, which, though not presently a member firm of NASD, was a member firm at the time of the events giving rise to the dispute, and participated in this proceeding; and, Royal Alliance Associates, Inc. and Prime Capital Services, Inc., both of which employed Respondent Barnes at various times during the events giving rise to the dispute.

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

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

Royal Alliance Associates, Inc.'s Member surcharge	= \$1,700.00
Royal Alliance Associates, Inc.'s Pre-hearing process fee	= \$ 750.00
<u>Royal Alliance Associates, Inc.'s Hearing process fee</u>	<u>= \$2,750.00</u>
Royal Alliance Associates, Inc.'s Total Member Fees	= \$5,200.00

Prime Capital Services, Inc.'s Member surcharge	= \$1,700.00
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Prime Capital Services, Inc.'s Pre-hearing process fee	= \$ 750.00
Prime Capital Services, Inc.'s Hearing process fee	= \$2,750.00
Prime Capital Services, Inc.'s Total Member Fees	= \$5,200.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournment fees assessed during these proceedings.

**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:

There were no three-day cancellation fees assessed during these proceedings.

**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.

There were no injunctive relief fees assessed during these proceedings.

**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:

Three (3) Pre-hearing sessions with the Panel @ \$1,125.00/session	= \$3,375.00
Pre-hearing conferences:	
August 15, 2005	1 session
August 24, 2005	1 session
November 22, 2005	1 session
Three (3) Hearing sessions @ \$1,125.00/session	= \$3,375.00
Hearing Dates:	
January 24, 2006	2 sessions
January 25, 2006	1 session
Total Forum Fees	= \$6,750.00

The Panel has assessed forum fees of \$3,375.00 to Claimants, jointly and severally.

The Panel has assessed forum fees of \$3,375.00 to Respondent Barnes.

**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.

There were no administrative costs assessed during these proceedings.

**Fee Summary**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= <u>\$3,375.00</u>
Total Fees	= \$3,675.00
<u>Less payments</u>	= <u>\$1,425.00</u>
Balance Due NASD Dispute Resolution	= \$2,250.00

Respondent Barnes is solely liable for:

Counterclaim Filing Fee	= \$ 225.00
<u>Forum Fees</u>	= <u>\$3,375.00</u>
Total Fees	= \$3,600.00
<u>Less payments</u>	= <u>\$ 975.00</u>
Balance Due NASD Dispute Resolution	= \$2,625.00

Respondent Veravest is solely liable for:

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

Respondent Allmerica is solely liable for:

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

Royal Alliance Associates, Inc. is solely liable for:

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

Prime Capital Services, Inc. is solely liable for:

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

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

**ARBITRATION PANEL**

Elizabeth L. Clark	-	Public Arbitrator, Presiding Chairperson
J. Philip Knight	-	Public Arbitrator
Mark Sidell	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

\_\_\_\_\_/s/\_\_\_\_\_  
Elizabeth L. Clark  
Public Arbitrator, Presiding Chairperson

January 29, 2006  
Signature Date

\_\_\_\_\_/s/\_\_\_\_\_  
J. Philip Knight  
Public Arbitrator


January 28, 2006  
Signature Date

\_\_\_\_\_/s/\_\_\_\_\_  
Mark Sidell  
Non-Public Arbitrator

January 27, 2006  
Signature Date

January 31, 2006  
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

  
Elizabeth L. Clark  
Public Arbitrator, Presiding Chairperson

1/29/06  
Signature Date

\_\_\_\_\_  
J. Philip Knight  
Public Arbitrator

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

\_\_\_\_\_  
Mark Sidell  
Non-Public Arbitrator

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

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

NASD Dispute Resolution

Arbitration No. 05-00142

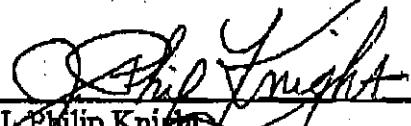
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Concurring Arbitrators' Signatures

Elizabeth L. Clark

Public Arbitrator, Presiding Chairperson

Signature Date

  
Philip Knight  
Public Arbitrator

1-28-06  
Signature Date

Mark Sidell

Non-Public Arbitrator

Signature Date

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



JAN. 27. 2006 2:01PM

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N. NO. 5014 P.P. 1

NASD Dispute Resolution

Arbitration No. 05-00142

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Concurring Arbitrators' Signatures

Elizabeth L. Clark

Public Arbitrator, Presiding Chairperson

Signature Date

J. Philip Knight

Public Arbitrator

Signature Date

  
Mark Sidell

Non-Public Arbitrator

  
1/27/06  
Signature Date

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