

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

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In the Matter of the Arbitration Between:

Name of the Claimant

Shirley D. deLong

Case Number: 05-00276

Name of the Respondents

First Citizens Investor Services, Inc.  
Robert Townsend Pleasants, Jr.

Hearing Site: Charlotte, North Carolina

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

**REPRESENTATION OF PARTIES**

Claimant, Shirley D. deLong, hereinafter referred to as "Claimant", was represented by John F. Bloss, Esq., Clark Bloss & Wall, PLLC, Greensboro, North Carolina

Respondents, First Citizens Investor Services, Inc. ("First Citizens") and Robert Townsend Pleasants, Jr. (Pleasants"), hereinafter collectively referred to as "Respondents", were represented by Gary J. Rickner, Esq., Ward and Smith, P.A., New Bern, North Carolina.

**CASE INFORMATION**

Statement of Claim filed on January 10, 2005.

Claimant signed the Uniform Submission Agreement on January 10, 2005.

Statement of Answer filed by Respondents on March 21, 2005.

A representative of Respondent First Citizens executed the Uniform Submission Agreement on February 14, 2005.

Respondent Pleasants did not file a Uniform Submission Agreement with NASD Dispute Resolution.

**CASE SUMMARY**

Claimant asserted the following causes of action, among others: unsuitability, breach of fiduciary duty, negligent misrepresentation, actual and/or constructive fraud, negligent supervision, and *respondeat superior*. The causes of action relate to the purchase and sale of variable annuities.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: contributory negligence, assumption of risk, estoppel, waiver, ratification, no proximate cause, claims are barred by the applicable statutes of limitation and repose, and negligent acts or omissions.

RELIEF REQUESTED

Claimant in her Statement of Claim requested:

|                      |                    |
|----------------------|--------------------|
| Compensatory Damages | \$ 12,000.00       |
| Punitive Damages     | \$ 13,000.00       |
| Interest             | amount unspecified |
| Attorneys' Fees      | amount unspecified |
| Other Costs          | amount unspecified |

Respondents in their Statement of Answer requested that the Statement of Claim be dismissed in its entirety, that they be awarded costs, and that attorney's fees be assessed against the Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Pleasants did not file with NASD Dispute Resolution, a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Arbitrator on all issues submitted.

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, and the post-hearing submissions, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents First Citizens and Pleasants are jointly and severally liable to and shall pay to Claimant compensatory damages of \$8,500.00, plus simple interest at a rate of 6% per annum on \$5,500.00 of that amount. Interest shall accrue from September 1, 2000 through the date the Award is paid in full;
2. All claims for attorneys' fees are denied in their entirety;
3. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and
4. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

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 = \$ 125.00

### Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Respondent First Citizens is a party.

Member surcharge = \$ 425.00

Total Member Fees = \$ 425.00

### Forum Fees and Assessments

The Arbitrator has assessed forum fees for each session conducted. 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:

One (1) Pre-hearing session with a single arbitrator @ \$ 450.00 = \$ 450.00

Pre-hearing conference: June 22, 2005 1 session

Two (2) Hearing sessions @ \$ 450.00 = \$ 900.00

Hearing Date: September 20, 2005 2 sessions

Total Forum Fees = \$ 1,350.00

1. The Arbitrator has assessed \$1,350.00 of the forum fees jointly and severally to Respondents.

### FEE SUMMARY

1. Claimant is assessed and shall pay the following fees:

Initial Filing Fee = \$ 125.00

Total Fees = \$ 125.00

Less payments = \$ 575.00

Refunded Owed to Claimant = \$ 450.00

2. Respondent First Citizens is assessed and shall pay the following fees:

Member Fees = \$ 425.00

Total Fees = \$ 425.00

Less payments = \$ 425.00

Balance Due NASD Dispute Resolution = \$ 00.00

3. Respondents are jointly and severally assessed and shall pay the following fees:

|                                     |               |
|-------------------------------------|---------------|
| Forum Fees                          | = \$ 1,350.00 |
| Total Fees                          | = \$ 1,350.00 |
| Less payments                       | = \$ 750.00   |
| Balance Due NASD Dispute Resolution | = \$ 600.00   |

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

ARBITRATOR

Philip H. DeTurk - Public Arbitrator, Presiding Chairperson

Arbitrator's Signature

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Philip H. DeTurk  
Public Arbitrator, Presiding Chairperson

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

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

3. Respondents are jointly and severally assessed and shall pay the following fees:

|                                     |               |
|-------------------------------------|---------------|
| Forum Fees                          | = \$ 1,350.00 |
| Total Fees                          | = \$ 1,350.00 |
| Less payments                       | = \$ 750.00   |
| Balance Due NASD Dispute Resolution | = \$ 600.00   |

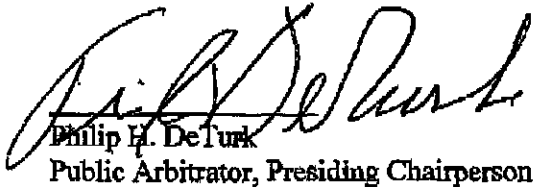
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATOR

Philip H. DeTurk

Public Arbitrator, Presiding Chairperson

  
Arbitrator's Signature

  
Philip H. DeTurk  
Public Arbitrator, Presiding Chairperson

10/05/05  
Signature Date

October 5 2005  
Date of Service (For NASD Dispute Resolution office use only)