

**Stipulated Award  
NASD Dispute Resolution**

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C. Warren Jenkins v. Legacy Financial Services, Inc. and Joseph R. Karsner, IV

Case Number: 05-00940

Hearing Site: Washington, DC

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

**REPRESENTATION OF PARTIES**

Claimant, C. Warren Jenkins, hereinafter referred to as "Claimant", was represented by William B. Young, Jr., Esq., Hooper & Weiss, L.L.C., Orlando, Florida.

Respondents Joseph R. Karsner, IV ("Karsner") and Legacy Financial Services, Inc. ("Legacy"), hereinafter collectively referred to as "Respondents", were represented by Christopher M. Corchiarino, Esq. and George S. Mahaffey Jr., Esq., Goodell, Devries, Leech & Dann, LLP, Baltimore, Maryland.

**CASE INFORMATION**

Statement of Claim filed on February 16, 2005.

Claimants filed a Response to Respondents' Motion to Dismiss on April 29, 2005.

Claimant filed an Amended Statement of Claim on April 26, 2005.

Claimant signed the Uniform Submission Agreement on December 2, 2005.

Statement of Answer filed by Respondents on April 13, 2005.

Respondents filed a Response to Claimant's Amended Statement of Claim on May 4, 2005.

A representative of Respondent Legacy executed the Uniform Submission Agreement on April 12, 2005.

Respondent Karsner signed the Uniform Submission Agreement on April 12, 2005.

**CASE SUMMARY**

Claimant asserted the following causes of action, among others: negligence, breach of contract, breach of fiduciary duty, *respondeat superior*, violation of NASD conduct rules, failure to supervise, unsuitability, omissions/misrepresentation, fraudulent inducement, and common law fraud. The causes of action relate to the purchase of American Skandia Advisor Funds.

Unless specifically admitted in their Statement of Answer, Respondents denied the allegations of wrongdoing set forth in the Statement of Claim and asserted

the following defenses, among others: failure to state a claim upon which relief can be granted, assumption of risk, negligence, doctrine of waiver and estoppel, any damages suffered by Claimant were the result of third parties' actions, failure to mitigate damages, and Maryland statute of limitations.

### **RELIEF REQUESTED**

Claimant requested: compensatory damages in the amount of \$ 90,352.00, attorneys' fees, costs, interest, punitive damages and such other relief as is just and proper.

Respondents requested dismissal of the Statement of Claim and Amended Statement of Claim in their entirety, attorneys' fees, forum fees, and such other relief as is just and proper.

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

On September 14, 2005, the Arbitration Panel (the "Panel") granted Respondents' Motion to Dismiss in part and denied the Motion to Dismiss in part.

On August 4, 2006, the parties advised that they had resolved this matter. Pursuant to this resolution, Claimant has agreed to dismissal with prejudice of his claims. Further, the parties agreed that the Respondents are not liable for the counts listed in the Statement of Claim, that the investments at issue were suitable, and that the Stipulated Award for this matter may be executed in counterpart copies.

### **AWARD**

The parties entered into an agreement to present to the Panel a Stipulated Award. Upon motion of both Respondents for a Stipulated Award and Claimant's agreement, as a result of information and documents obtained during the discovery process, that all investments at issue were suitable and that the Respondents are not liable for any of the counts in the Statement of Claim and Amended Statement of Claim, the Panel finds that the claims, allegations and information contained in the Statement of Claim and Amended Statement of Claim are clearly erroneous and that the Respondents were not involved in the alleged investment-related sales practice violations and hereby grants the parties' motion and enters this award granting the following relief:

1. Pursuant to the agreement reached between all parties, all claims against Respondents are dismissed with prejudice;
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Karsner's registration records maintained by the Central Registration Depository ("CRD"), with the

understanding that pursuant to NASD Notices to Members 04-16, Respondent Karsner 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 of the NASD Code of Arbitration Procedure, the arbitration panel has made the following affirmative findings of fact:

The claims, allegations and information contained in the Statement of Claim and Amended Statement of Claim are clearly erroneous and the registered person was not involved in the alleged investment-related sales practice violations.

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.

### **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	= \$ 225.00
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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(s) at the time of the events giving rise to the dispute. In this matter, the member firm is a party.

Member Surcharge	= \$ 1,100.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 1,700.00
<u>Total Member Fees</u>	<u>= \$ 3,550.00</u>

#### **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:

August 7-9, 2006 settled by all parties	= \$ 300.00
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### **Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing 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. Forum fees associated with these proceedings are:

Three (3) Pre-hearing conference sessions with the Panel @ \$ 750 = \$ 2,250.00  
Pre-hearing conferences: August 3, 2005 1 session  
August 30, 2005 1 session  
September 14, 2005 1 session  

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Total Forum Fees = \$ 2,250.00

1. The Panel has assessed \$ 750.00 of the forum fees to Claimant.
2. The Panel has assessed \$ 750.00 of the forum fees to Respondent Legacy.
3. The Panel has assessed \$ 750.00 of the forum fees to Respondent Karsner.

### **Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 225.00
Three-Day Cancellation Fee	= \$ 100.00
Forum Fees	= \$ 750.00
Total Fees	= \$ 1,075.00
Less payments	= \$ 975.00
Balance Due NASD Dispute Resolution	= \$ 100.00
2. Respondent Legacy is solely liable for:

Member Fees	= \$ 3,550.00
Three-Day Cancellation Fee	= \$ 100.00
Forum Fees	= \$ 750.00
Total Fees	= \$ 4,400.00
Less payments	= \$ 3,550.00
Balance Due NASD Dispute Resolution	= \$ 850.00
3. Respondent Karsner is solely liable for:

Three-Day Cancellation Fee	= \$ 100.00
Forum Fees	= \$ 750.00
Total Fees	= \$ 850.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 850.00

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

**ARBITRATION PANEL**

John Leonard Young, Esq.	-	Public Arbitrator, Presiding Chair
Stephen Paul Carrier	-	Public Arbitrator
Daniel T. McHugh	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
John Leonard Young, Esq.  
Public Arbitrator, Presiding Chair

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

/s/  
Stephen Paul Carrier  
Public Arbitrator

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

/s/  
Daniel T. McHugh  
Non-Public Arbitrator

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Signature Date

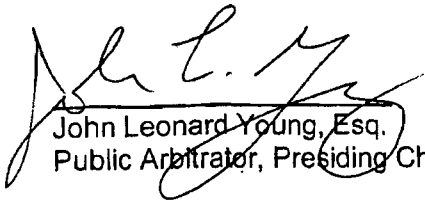
November 9, 2006  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

John Leonard Young, Esq.  
Stephen Paul Carrier  
Daniel T. McHugh

- Public Arbitrator, Presiding Chair
- Public Arbitrator
- Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
John Leonard Young, Esq.  
Public Arbitrator, Presiding Chair

Aug. 24, 2006  
Signature Date

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Stephen Paul Carrier  
Public Arbitrator

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Signature Date

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Daniel T. McHugh  
Non-Public Arbitrator

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

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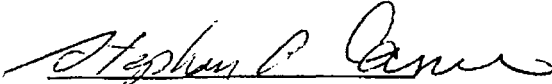
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John Leonard Young, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

  
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Stephen Paul Carrier  
Public Arbitrator

8 Nov '06  
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Signature Date

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Daniel T. McHugh  
Non-Public Arbitrator

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Stephen Paul Carrier  
Public Arbitrator

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Signature Date

  
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Daniel T. McHugh  
Non-Public Arbitrator

8/24/2006  
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Signature Date

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Date of Service (For NASD office use only)