

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant

Wayne Alofs, Virginia Alofs, and Virginia Alofs Trust

And

05-02165  
Chicago, Illinois

Name of Respondents

Robert W. Baird & Co., Inc.  
Paul Kuiper

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

**REPRESENTATION OF PARTIES**

Wayne Alofs, Virginia Alofs, and Virginia Alofs Trust ("**Claimants**") were represented by Andrew Stoltmann, Esq., Stoltmann Law Offices, Chicago, Illinois.

Robert W. Baird & Co., Inc. and Paul Allen Kuiper hereinafter referred to as ("**Respondents**") were represented by Gregory G. Wille, Esq., Wille, Gregory & Lundeen LLP, Milwaukee, Wisconsin.

**CASE INFORMATION**

The Statement of Claim was filed on or about April 25, 2005. Submission Agreement of Claimant Wayne Alofs, Virginia Alofs, and Virginia Alofs Trust was signed on April 15, 2005.

Joint Statement of Answer was filed by Respondents Robert W. Baird & Co. Incorporated and Paul Allen Kuiper on or about October 25, 2005. Submission Agreement of Respondent Robert W. Baird & Co., Inc. was signed on July 29, 2005. Submission Agreement of Respondent Paul Kuiper was signed on September 6, 2005.

**CASE SUMMARY**

Claimant(s) asserted the following causes of action: sale of unsuitable investments, negligence, misrepresentations and omissions, unauthorized trading, state securities law violations, violation of NASD conduct rules, breach of contract, common law fraud, breach of fiduciary duty and constructive fraud, and respondeat superior. The causes of action relate to unsuitable investment recommendations in claimants IRA accounts. Claimants

specifically alleged that the investments were grossly unsuitable investment recommendations in the Claimants' Individual Retirement Accounts that represented decades of hard work and savings.

Unless specifically admitted in its Answer, Respondents Robert W. Baird & Co. Incorporated and Paul Allen Kuiper denied the allegations made in the Statement of Claim and specifically asserted the following defenses: Any actual losses sustained by Claimants was the direct and proximate result of the Alofs' own investment choices, market conditions, and the risks inherent in the investment activity they sought to pursue, which risks they willingly and knowingly assumed; The Alofs did not reasonably rely on any false information or non-disclosure of material information by Mr. Kuiper of Baird in making any investment decision that resulted in the damages alleged; At all times the Alofs retained and exercised control over all activity related to the investment of their assets; The Alofs are barred from pursuit of the claims alleged on grounds of waiver, ratification and estoppel by virtue of their continued pursuit of the pattern of investment activity now alleged to be unsuitable, without objection or complaint, over the course of more than six years; No claim of violation of the Michigan Securities Act is adequately alleged, and any such claim is barred by the statutes of limitation; All claims alleged, which relate to an allocation of assets made in January 1998 or before are barred by the applicable statutes of limitations; Any damages incurred, as alleged, were the result of the Alofs' own negligence; The alleged violation of NASD or other self-regulatory rules fails to state a claim on which relief may be granted; and The Alofs failed to mitigate their alleged damages.

#### **RELIEF REQUESTED**

Claimants requested an award in the amount of \$628,602.00 in compensatory damages, plus punitive damages, disgorgement of commissions, interest, costs and attorney's fees.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

#### **OTHER ISSUES CONSIDERED & DECIDED**

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "NASD").

#### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Robert W. Baird & Co., Inc. is liable for and shall pay to Claimant Wayne Alofs, the sum of \$25,000.00 (**Twenty Five Thousand Dollars and No Cents**) as compensatory damages.
2. Respondent Robert W. Baird & Co., Inc. is liable for and shall pay to Claimant Virginia Alofs, the sum of \$25,000.00 (**Twenty Five Thousand Dollars and No Cents**) as compensatory damages.
3. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees, not specifically awarded or otherwise provided for above.

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### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$375.00

#### **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(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is Robert W. Baird & Co., Inc.

Member surcharge	\$	2,250.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	4,000.00
Total Member Fees	\$	<u>7,000.00</u>

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

The Arbitration Panel assesses forum fees for each hearing session conducted or each decision rendered on a discovery-related motion on the papers. 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. Fees associated with these proceedings are:

1	Pre-hearing session(s) with Panel	@	1,200.00	\$	1,200.00
	December 5, 2005	1	session		
8	Hearing sessions	@	1,200.00	\$	9,600.00
	June 27, 2005	2	sessions		
	June 28, 2006	2	sessions		
	June 29, 2006	2	sessions		
	June 30, 2006	2	sessions		
	Total Forum Fees			\$	10,800.00

The Arbitration Panel has assessed \$1,200.00 of the forum fees to Wayne Alofs, Virginia Alofs, and Virginia Alofs Trust.

The Arbitration Panel has assessed \$9,600.00 of the forum fees to Robert W. Baird & Co., Inc.

#### Fee Summary

Claimants, Wayne Alofs, Virginia Alofs, and Virginia Alofs Trust are jointly and severally liable for:

Initial Filing Fee	= \$	375.00
<u>Forum Fees</u>	= \$	1,200.00
Total Fees	= \$	1,575.00
<u>Less payments</u>	= \$	-1,575.00
Balance Due NASD Dispute Resolution	= \$	0.00

Respondent, Robert W. Baird & Co., Inc. is liable for:

Member Fees	= \$	7,000.00
<u>Forum Fees</u>	= \$	9,600.00
Total Fees	= \$	16,600.00
<u>Less payments</u>	= \$	-7,000.00
Balance Due NASD Dispute Resolution	= \$	9,600.00

All balances are due to NASD Dispute Resolution

#### ARBITRATION PANEL

Susan Bogart, J.D. - Public Arbitrator, Presiding Chair  
Allen D. Schwartz, Esq. - Public Arbitrator  
James Walter Guthrie - Non-Public Arbitrator

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Concurring Arbitrators:

Susan Bogart  
Susan Bogart, J.D.  
Public Arbitrator, Presiding Chair

7/7/06  
Signature Date

Allen D. Schwartz, Esq.  
Allen D. Schwartz, Esq.  
Public Arbitrator

Signature Date

James Walter Guthrie  
James Walter Guthrie  
Non-Public Arbitrator

Signature Date

7/7/06  
Date of Service (For NASD office use only)

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Concurring Arbitrators:

Susan Bogart, J.D.  
Public Arbitrator, Presiding Chair

Allen D. Schwartz  
Allen D. Schwartz, Esq.  
Public Arbitrator

Signature Date

7/6/2006  
Signature Date

James Walter Guthrie  
Non-Public Arbitrator

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Public Arbitrator

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Non-Public Arbitrator

Signature Date

07/06/06

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