

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

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In the Matter of the Arbitration Between:

Wayne V. and Sandra A. Fassett and the Wayne V. Fassett IRA (Claimants) vs. Park Avenue Securities, LLC (Respondent)

Case Number: 05-02780

Hearing Site: Philadelphia, Pennsylvania

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Nature of the Dispute: Customers vs. Member.

**REPRESENTATION OF PARTIES**

Claimants Wayne V. and Sandra Fassett and the Wayne V. Fassett IRA, hereinafter collectively referred to as "Claimants": John J. McGovern, Esq., Scranton, PA.

Respondent Park Avenue Securities, LLC ("Park Avenue") hereinafter referred to as "Respondent": Glen Silverstein, Esq., And S. Alyssa Young, Esq., Leader Berkon, LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: May 26, 2005.

Claimant Wayne V. Fassett signed the Uniform Submission Agreement: May 11, 2005.

Claimant Sandra A. Fassett signed the Uniform Submission Agreement: May 11, 2005.

Statement of Answer filed by Respondent on or about: August 11, 2005.

Respondent signed the Uniform Submission Agreement: June 9, 2005.

**CASE SUMMARY**

Claimants asserted the following causes of action: respondeat superior, professional negligence, unsuitability, fraud, misrepresentations, breach of fiduciary duty, failure to supervise, violation of NASD rules, federal securities laws and common laws including Section 401 of the Pennsylvania Act, and violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

**RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$200,000.00, disgorgement and restitution of all earnings, profits, compensation and benefits received

by Respondent as a result of its unlawful practices, attorneys' fees and costs; pre- and post judgment interest, punitive damages, treble damages in the amount of \$400,000.00, rescission of the purchase and such other relief the Panel deems necessary or appropriate.

Respondent requested the dismissal of the Statement of Claim in its entirety.

### **OTHER ISSUES CONSIDERED AND 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.

### **AWARD**

After considering the pleadings, 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:

1. Claimants' claims are dismissed in their entirety.
2. 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	= \$ 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 firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Park Avenue Securities, LLC is a party.

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:

June 6-8, 2006 adjournment by Claimant	= Waived
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#### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the

arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel @ \$1,200.00	= \$1,200.00
Pre-hearing conference: November 4, 2005 1 session	
Four (4) Hearing sessions @ \$1,200.00 per session	= \$4,800.00
Hearing Dates: November 7, 2006 2 sessions	
November 8, 2006 2 sessions	
<hr/> Total Forum Fees	<hr/> = \$6,000.00

1. The Panel has assessed \$600.00 of the forum fees to Claimants jointly and severally.
2. The Panel has assessed \$5,400.00 of the forum fees to Respondent.

**Fee Summary**

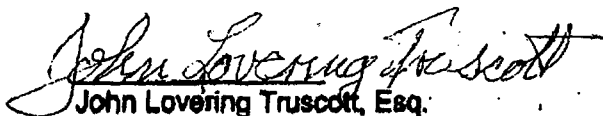
1. Claimants are jointly and severally liable for:	
Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 600.00
<hr/> Total Fees	<hr/> = \$ 975.00
Less payments	= \$ 1,575.00
<hr/> Refund Due to Claimants	<hr/> = \$ 600.00
2. Respondent is solely liable for:	
Member Fees	= \$ 7,000.00
Forum Fees	= \$ 5,400.00
<hr/> Total Fees	<hr/> = \$12,400.00
Less payments	= \$ 7,000.00
<hr/> Balance Due NASD Dispute Resolution	<hr/> = \$ 5,400.00

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

**ARBITRATION PANEL**

John Lovering Truscott, Esq.	-	Public Arbitrator, Presiding Chairperson
Roslyn G. Pollack, Esq.	-	Public Arbitrator
Clifford A. Harwick	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
John Lovering Truscott, Esq.  
Public Arbitrator, Presiding Chairperson

11/14/06  
Signature Date

Roslyn G. Pollack, Esq.  
Public Arbitrator

Signature Date

Clifford A. Harwick  
Non-Public Arbitrator

Signature Date

November 17, 2006  
Date of Service (For NASD Dispute Resolution use only)

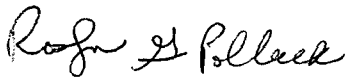
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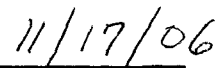
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