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

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In the Matter of the Arbitration Between:

Names of the Claimants

Emma Jeanette McCall, Individually  
Loyd H. McCall, Jr., Individually  
Emma Jeanette McCall Revocable Living Trust

Case Number: 05-04552

Name of the Respondent

Ogilvie Security Advisors Corporation,  
an Illinois Corporation

Hearing Site: Atlanta, Georgia

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

For Emma Jeanette McCall, Individually, Loyd H. McCall, Jr., Individually and Emma Jeanette McCall Revocable Living Trust, hereinafter referred to as "Claimants": Sterling A. Hawkins, Esq., Marshall & Lueder, LLC, Atlanta, Georgia.

For Ogilvie Security Advisors Corporation, an Illinois Corporation ("Ogilvie"), hereinafter referred to as "Respondent": Jon P. McCarty, Esq., Vedder, Price, Kaufman & Kammholz, P.C., Chicago, Illinois.

**CASE INFORMATION**

Statement of Claim filed on or about: August 30, 2005.

Claimants signed the Uniform Submission Agreement: August 30, 2005.

Motion to Dismiss and Statement of Answer filed by Respondent on or about: November 10, 2005.

Respondent signed the Uniform Submission Agreement: November 7, 2005.

Response and Brief in Opposition to Respondents Motion to Dismiss filed by Claimants on or about: March 1, 2006.

Reply in Support of its Motion to Dismiss filed by Respondent on or about: March 16, 2006..

**CASE SUMMARY**

Claimants asserted the following causes of action: 1) breach of fiduciary duty; 2) unsuitability; 3) negligent supervision; 4) misrepresentation/omission of risks; 5) breach of contract; 6) selling away; 7) fraud; 8) sale of unregistered securities without exemption; and, 9) sale of securities through written or oral misstatement or omission. The causes of action relate to the purchase of Bee Communications securities for Claimants' account.

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 \$525,000.00, rescission, restoration of any monetary and other benefits conferred by Claimants to Respondent in the amount of \$525,000.00, punitive damages in the amount of \$1,000,000.00, costs in the amount of \$15,000.00, attorney's fees in the amount of \$75,000.00, interest in the amount of \$36,750.00 and for such other and further relief as this Panel deemed appropriate and just.

Respondent requested that the Statement of Claim be dismissed in its entirety and an award of attorneys' fees, costs and expenses incurred in connection with this proceeding.

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

On March 29, 2006, a telephonic hearing was held to hear oral argument on Respondent's Motion to Dismiss. Thereafter, on March 30, 2006, the Panel issued an Order that granted Respondent's Motion to Dismiss.

The parties have agreed that the Award in this matter may be entered in counterpart copies or that a signed handwritten Award may be entered.

### **AWARD**

After considering the pleadings and the Motion to Dismiss, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

The Panel having considered the motion of Respondent to dismiss this matter and the briefs and arguments of counsel, and having found after due consideration that claims asserted in the Statement of Claim are untimely under applicable statutes of limitation, it is hereby ordered that the Statement of Claim is dismissed and the parties shall bear their own costs and expenses.

Any and all claims for relief not specifically addressed herein, including Claimants' request for punitive damages and Respondent's request for attorneys' fees, are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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	= \$ 500.00
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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 at the time of the events giving rise to the dispute. Accordingly, Respondent is a party to this dispute and was a member of NASD at the time the following fees were assessed:

Member surcharge	= \$2,800.00
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Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$5,000.00</u>
Total Member Fees	= \$8,550.00

### **Adjournment Fees**

No requests for adjournments were filed in this matter.

### **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:

No cancellation fees were assessed in this matter.

### **Injunctive Relief Fees**

No injunctive relief fees were incurred during this proceeding.

### **Forum Fees and Assessments**

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

Two (2) Pre-hearing sessions with the Panel @ \$1,200.00	= \$2,400.00
Pre-hearing conferences:     January 24, 2006     1 session	
March 29, 2006     1 session	
<u>Total Forum Fees</u>	<u>= \$2,400.00</u>

The Panel has assessed \$1,200.00 of the forum fees jointly and severally to Claimants.

The Panel has assessed \$1,200.00 of the forum fees to Respondent.

### **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.

No administrative costs were incurred during this proceeding.

### **Fee Summary**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
<u>Forum Fees</u>	<u>= \$ 1,200.00</u>
Total Fees	= \$ 1,700.00



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<u>Less payments</u>	= \$ 1,700.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent is solely liable for:

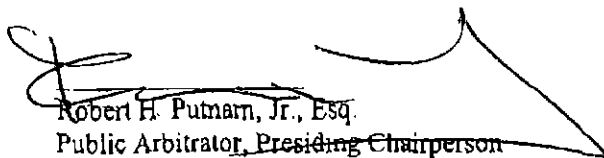
Member Fees	= \$ 8,550.00
<u>Forum Fees</u>	= \$ 1,200.00
Total Fees	= \$ 9,750.00
<u>Less payments</u>	= \$ 3,550.00
Balance Due NASD Dispute Resolution	= \$ 6,200.00

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

ARBITRATION PANEL

Robert H. Putnam, Jr., Esq.	-	Public Arbitrator, Presiding Chairperson
William Mase Moxley	-	Public Arbitrator
Charles M. Dalziel, Jr., Esq	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

  
Robert H. Putnam, Jr., Esq.  
Public Arbitrator, Presiding Chairperson

3-31-06  
Signature Date

William Mase Moxley  
Public Arbitrator

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

Charles M. Dalziel, Jr., Esq.  
Non-Public Arbitrator

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

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

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Public Arbitrator, Presiding Chairperson

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Signature Date

William M Moxley  
William Mase Moxley  
Public Arbitrator

3/30/06  
Signature Date

Charles M. Dalziel, Jr., Esq.  
Non-Public Arbitrator

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