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

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In the Matter of the Arbitration Between:

Name of the Claimant

The Estate of Louise T. McCullen  
(Lottie T. Smith, Executor)

Case Number: 06-00600

Names of the Respondents

First Citizens Investor Services, Inc.  
Timothy Wilson

Hearing Site: Raleigh, North Carolina

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

**REPRESENTATION OF PARTIES**

For The Estate of Louise T. McCullen (Lottie T. Smith, Executor), hereinafter referred to as "Claimant": Nicholas D. Thomas, Esq., Vero Beach, Florida.

For First Citizens Investor Services, Inc. ("FCIS") and Timothy Wilson ("Wilson"), hereinafter referred to as "Respondents": Gary J. Rickner, Esq., Ward and Smith, P.A., New Bern, North Carolina.

**CASE INFORMATION**

Statement of Claim filed on or about: February 8, 2006.

Claimant signed the Uniform Submission Agreement: January 13, 2006.

Statement of Answer filed by Respondents on or about: March 31, 2006.

Respondent FCIS signed the Uniform Submission Agreement: February 14, 2006.

Respondent Wilson signed the Uniform Submission Agreement: April 27, 2006.

**CASE SUMMARY**

Claimant asserted the following causes of action: 1) breach of contract; 2) common law fraud 3) breach of fiduciary duty/suitability; 4) negligence and gross negligence; and, 5) violation of the anti-fraud provisions of the North Carolina Securities Act. The causes of action relate to the purchase of a fixed annuity issued by the Fidelity & Guaranty Life Insurance Company in Claimant's account.

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

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$100,000.00, interest at the statutory rate of 8%, punitive damages, costs and reasonable attorney's fees.

Respondents requested that the Statement of Claim be dismissed, assess all costs including arbitration fees and attorneys' fees against Claimant and an award of such other and further relief as this Panel deemed just and proper

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

The Panel states, in its Award, that their final damage calculation was arrived at by taking Claimant's total annuity premium in the amount of \$108,298.40, minus two payments received by Claimant each in the amount of \$1,465.00, totaling a net damage calculation in the amount of \$105,368.40.

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, 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:

Respondents are found jointly and severally liable for Claimant's claim of suitability and shall pay to Claimant compensatory damages in the amount of \$105,368.40, plus interest at 3% per annum from March 18, 2003 until the date of payment of the Award.

Respondents are found jointly and severally liable and shall pay to Claimant all costs.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages and the parties' requests 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	= \$ 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 at the time of the events giving rise to the dispute. Accordingly, Respondent FCIS is a party to this dispute and was a member of NASD at the time the following fees were assessed:

Member surcharge	= \$ 1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 1,700.00
Total Member Fees	= \$ 3,550.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

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**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

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:

One (1) Pre-hearing session with the Panel @ \$750.00	= \$ 750.00
Pre-hearing conference: June 27, 2006 1 session	
Two (2) Hearing sessions with the Panel @ \$750.00	= \$1,500.00
Hearing Date: September 28, 2006 2 sessions	
Total Forum Fees	= \$2,250.00

The Panel has assessed the total forum fees of \$2,250.00 jointly and severally to Respondents.

**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**

Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 225.00
<u>Total Fees</u>	= \$ 225.00
<u>Less payments</u>	= \$ 225.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Respondent FCIS is solely liable for:

<u>Member Fees</u>	= \$ 3,550.00
<u>Total Fees</u>	= \$ 3,550.00
<u>Less payments</u>	= \$ 3,550.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 2,250.00
<u>Total Fees</u>	= \$ 2,250.00
<u>Less payments</u>	= \$ 750.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 1,500.00

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

**ARBITRATION PANEL**

<i>Donald L. Horowitz</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Harold G. Koger</i>	-	<i>Public Arbitrator</i>
<i>Donald Cornelius Morrison, Sr.</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

                  /s/                    
Donald L. Horowitz  
Public Arbitrator, Presiding Chairperson

September 29, 2006  
Signature Date

                  /s/                    
Harold G. Koger  
Public Arbitrator

September 29, 2006  
Signature Date

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September 29, 2006  
Date of Service (For NASD Dispute Resolution office use only)

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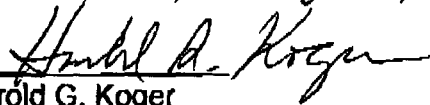
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Signature Date

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Signature Date

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## NASD Dispute Resolution

Arbitration No. 06-00600

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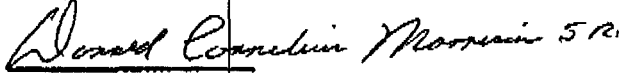
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