

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Maria F. Aerts on behalf of the Maria Aerts IRA Roll-Over and Maria Aerts Roth Conversion IRA, Claimants v. H.D. Vest Investment Services and Frederic R. Chavez, Respondents

Case Number: 06-03314

Hearing Site: Houston, Texas

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

**REPRESENTATION OF PARTIES**

For Claimant:

Richard J. Edson, Esq.  
Law Offices of Richard J.  
Edson  
Sacramento, California

For Respondent H.D. Vest Investment Services:

Gary S. Kessler, Esq.  
Robert P. Oliver, Esq.  
Kessler Collins  
Dallas, Texas

For Respondent Frederic R. Chavez:

Frederic R. Chavez  
Pro Se  
San Antonio, Texas

**CASE INFORMATION**

Statement of Claim filed: July 10, 2006

Claimant's Uniform Submission Agreement signed: June 28, 2006

Statement of Answer filed by Respondent H.D. Vest Investment Services: September 8, 2006

Respondent H.D. Vest Investment Services' Uniform Submission Agreement signed: August 26, 2006

Statement of Answer filed by Respondent Frederic R. Chavez: September 8, 2006

Respondent Frederic R. Chavez's Uniform Submission Agreement signed: September 8, 2006

### **CASE SUMMARY**

Claimant asserted the following causes of action: unsuitability, violation of New York Stock Exchange Rule 405 ("Know Your Customer" rule) and NASD Conduct Rules, failure to diversify, failure to engage in loss management, negligence, breach of fiduciary duty, and failure to supervise. Claimant's allegations involved the purchase of Invesco and Janus mutual funds for her accounts.

Unless specifically admitted in its Answer, Respondent H.D. Vest Investment Services denied the allegations of wrongdoing set forth in Claimant's Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in his Answer, Respondent Frederic R. Chavez denied the allegations of wrongdoing set forth in Claimant's Statement of Claim.

### **RELIEF REQUESTED**

Claimant requested \$121,045.12 in compensatory damages, unspecified punitive damages, pre- and post-judgment interest at the highest legal rate, and costs, including attorney's fees and consulting fees.

Respondents requested dismissal of Claimant's Statement of Claim in its entirety.

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

On September 8, 2006, Respondent H.D. Vest Investment Services filed a Motion to Dismiss for Failure to State a Claim and for Lack of Jurisdiction. On September 29, 2006, Claimant filed an Opposition to Respondent H.D. Vest Investment Services' Motion to Dismiss. On November 7, 2006, Respondent H.D. Vest Investment Services filed a Reply Brief in Support of Motions to Dismiss. On November 30, 2006, Respondent H.D. Vest Investment Services filed a Second Motion to Dismiss. On December 15, 2006, Claimant filed an Opposition to Respondent H.D. Vest Investment Services' Second Motion to Dismiss. On December 22, 2006, Respondent H.D. Vest Investment Services filed a Reply in Support of its Second Motion to Dismiss. On January 3, 2007, the parties and the Panel participated in a pre-hearing conference during which the Panel heard oral argument from the parties regarding the issues raised in Respondent H.D. Vest Investment Services' Motions to Dismiss. The Panel hereby grants Respondent H.D. Vest Investment Services' initial Motion to Dismiss. The Panel declines to rule on the Second Motion to Dismiss because its decision regarding the initial Motion to Dismiss is dispositive.

The parties 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, Respondent H.D. Vest Investment Services' Motions to Dismiss, the briefing that was submitted in connection therewith, and the parties' oral arguments, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent H.D. Vest Investment Services' initial Motion to Dismiss is granted, and this matter is dismissed with prejudice as to all Respondents.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) 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 received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 300.00
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#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm H.D. Vest Investment Services is a party, and the following fees are assessed:

Member Surcharge	= \$1,700.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$2,750.00
<b>Total Member Fees</b>	<b>= \$5,200.00</b>

#### **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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), which lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) pre-hearing conference sessions with the Panel @ \$1,125.00/session	= \$2,250.00
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Pre-hearing conferences: November 14, 2006	1 session	
January 3, 2007	1 session	
<b>Total Forum Fees</b>		<b>= \$2,250.00</b>

The Panel assessed \$2,250.00 of the forum fees to Claimant.

**Fee Summary**

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 2,250.00
Total Fees	= \$ 2,550.00
Less payments	= \$(1,425.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 1,125.00</b>

2. Respondent H.D. Vest Investment Services is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
Less payments	= \$(5,200.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

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

**ARBITRATION PANEL**

<b>Richard Paul Bianchi</b>	-	<b>Public Arbitrator, Presiding Chair</b>
<b>Cory Steven Fein</b>	-	<b>Public Arbitrator</b>
<b>Richard P. Cancelmo, Jr.</b>	-	<b>Non-Public Arbitrator</b>

**Concurring Arbitrators' Signatures**



Richard Paul Bianchi  
Chair, Public Arbitrator

1-11-07  
Signature Date

\_\_\_\_\_  
Cory Steven Fein  
Public Arbitrator

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

\_\_\_\_\_  
Richard P. Cancelmo, Jr.  
Non-Public Arbitrator

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

1/11/07  
Date of Service

**ARBITRATION PANEL**

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<b>Richard P. Cancelmo, Jr.</b>	-	<b>Non-Public Arbitrator</b>

**Concurring Arbitrators' Signatures**

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Richard Paul Bianchi  
Chair, Public Arbitrator

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Signature Date

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Cory Steven Fein  
Public Arbitrator

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*Jan. 10, 2007*  
Signature Date

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Richard P. Cancelmo, Jr.  
Non-Public Arbitrator

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Signature Date

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*1/11/07*  
Date of Service

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Richard Paul Bianchi  
Chair, Public Arbitrator

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Signature Date

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Cory Steven Fein  
Public Arbitrator

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Signature Date



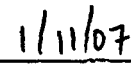
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Richard P. Cancelmo, Jr.  
Non-Public Arbitrator



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Signature Date



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Date of Service