

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

In the matter of the Arbitration Between

**Name of Claimant**

Lorraine Simpson

NASD Arbitration  
No.95-02177

**Name of Respondents**

U.S. Bancorp Securities  
Robert W. Towers, III  
Timothy Dugan

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**REPRESENTATION**

For Claimant: Robert M. Roth, R.M. Roth & Associates, Appleton, Wisconsin

For Respondents: Kenneth C. Mennemeier, Esq., Orrick, Herrington & Sutcliffe, Sacramento, California

**CASE INFORMATION**

Statement of Claim filed: May 4, 1995

Amendment to Claim filed: July 5, 1995

Claimant's Submission Agreement signed: April 18, 1995

Joint Statement of Answer filed: July 28, 1995

Respondents' Submission Agreements signed:

U.S. Bancorp: July 27, 1995

Robert Towers, III: June 6, 1995

Timothy Dugan: July 20, 1995

**HEARING INFORMATION**

The case was decided on the pleadings submitted.

### **CASE SUMMARY**

Claimant alleged breach of fiduciary duty, breach of the implied covenant of good faith and fair dealing, misrepresentation, failure to supervise, negligence and lack of suitability with respect to investments in variable annuities made at the recommendation of Respondents.

Respondents denied the allegations of wrongdoing, and asserted that various alternative investments were discussed with and background materials provided to Claimant prior to Claimant's decision to purchase the variable annuities. Respondents further asserted that there was full disclosure, that there were no misrepresentations and that the investments were suitable and appropriate for Claimant.

### **RELIEF REQUESTED**

Claimant requested damages, as amended, of \$10,000.00, plus interest, and costs of arbitration.

Respondents requested dismissal of all claims.

### **AWARD**

The undersigned arbitrator, having considered the pleadings and attachments submitted by the parties, has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims asserted by Claimant are dismissed in their entirety.
2. The parties shall each bear their respective costs of arbitration, including attorney's fees.

### **FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the NASD shall retain the \$75 non-refundable filing fee paid by Claimant.

The \$75 forum fee for a simplified arbitration is to be split between Claimant and Respondents.

|                           |   |          |
|---------------------------|---|----------|
| Claimant's one-half share | = | \$37.50  |
| Credit for deposit        | = | \$425.00 |
| Refund amount to Claimant | = | \$387.50 |

Respondents' one-half share, payable to the NASD = \$37.50

### **ARBITRATOR**

|               |                    |
|---------------|--------------------|
| Name          | Public / Industry  |
| Bette J. Roth | Public Chairperson |

Concurring Arbitrator's Signature

