

**Award**  
**FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimants

Case Number: 08-00326

Amardeep Misha  
Elizabeth Twaddell  
The Amardeep Misha And  
Elizabeth Twaddell Living Trust  
U/A DTD 8/22/01

Respondents

Hearing Site: San Francisco, California

Stone & Youngberg, LLC  
David Lowi  
William Evans, III

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Nature of the Dispute: Customers vs. Member and Associated Persons

**REPRESENTATION OF PARTIES**

Claimants, Amardeep Misha, Elizabeth Twaddell, and The Amardeep Misha And Elizabeth Twaddell Living Trust U/A DTD 8/22/01, hereinafter collectively referred to as "Claimants": Cary S. Lapidus, Esq., Law Offices of Cary S. Lapidus, San Francisco, California

Respondents, Stone & Youngberg, LLC, David Lowi and William Evans, III, hereinafter collectively referred to as "Respondents": Ben Suter, Esq., Keesal, Young & Logan, San Francisco, California

**CASE INFORMATION**

Statement of Claim filed on or about: February 6, 2008

Claimants' Amended Statement of Claim filed on or about: April 23, 2008

Claimants' Arbitration Brief filed on or about: December 22, 2008

Claimant, Amardeep Misha, signed the Uniform Submission Agreement: January 27, 2008

Claimant, Amardeep Misha, as Trustee of The Amardeep Misha And Elizabeth Twaddell Living Trust U/A DTD 8/22/01, signed the Uniform Submission Agreement: January 27, 2008

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**Claimant, Elizabeth Twaddell, signed the Uniform Submission Agreement: January 27, 2008**

**Claimant, Elizabeth Twaddell, as Trustee of The Amardeep Misha And Elizabeth Twaddell Living Trust U/A DTD 8/22/01, signed the Uniform Submission Agreement: January 27, 2008**

**Statement of Answer filed by Respondents on or about: March 26, 2008**

**Statement of Answer to Amended Statement of Claim filed by Respondents on or about: May 13, 2008**

**Respondents' Arbitration Brief filed on or about: December 19, 2008**

**Respondent, Stone & Youngberg, LLC, signed the Uniform Submission Agreement: March 26, 2008**

**Respondent, David Lowl, signed the Uniform Submission Agreement: March 26, 2008**

**Respondent, William Evans, III, signed the Uniform Submission Agreement: March 26, 2008**

### **CASE SUMMARY**

**Claimants alleged the following claims regarding the handling of their account: 1) Breach of Fiduciary Duty; 2) Professional Negligence; 3) Negligent Misrepresentation; 4) Breach of Contract; and 5) Common Law Fraud. Claimants also alleged that Respondents' conduct constitutes numerous violations of the FINRA Rules of Fair Practice including (a) Rule 2310 regarding the suitability of investment recommendations and fair dealing with customers; (b) Rule 2210 which prohibits the misstatement or omission of material facts in communications with the public; (c) Rule 2210(d)(1) which requires that sales materials be based on principles of fair dealing and good faith and should provide a sound basis for evaluating the facts in regard to any particular security discussed and which further prohibit any omissions or misrepresentations which, in light of the context of the material presented, would cause the communication to be misleading; (d) Rule 2110 which requires a FINRA member to observe high standards of commercial honor and just and equitable principles of trade; (d) Rule 2120 prohibiting the use of fraudulent devices; and (e) Rule 3010 regarding the failure to supervise. Claimants also alleged that Respondents William Evans, III and Stone & Youngberg, LLC are liable under the common law doctrine of respondeat superior as well as their own independent failure to review the sales materials to ensure they complied with Rule 2210(d)(1) and for their failure to properly supervise Mr. Lowl. Claimants' dispute involved investments in Stone & Youngberg Municipal Advantage Fund L.P. ("the Fund").**

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

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### **RELIEF REQUESTED**

In the Statement of Claim, Claimants requested that the Panel issue an award in their favor in an amount according to proof. As an alternative, Claimants requested rescission of the investment in the Fund along with prejudgment interest to make them whole. Claimants also requested that they be awarded prejudgment interest/lost opportunity damages, their costs of the arbitration, and punitive damages, as well as such other relief as the Panel deems appropriate.

In the Amended Statement of Claim, Claimants requested that the Panel issue an award in their favor in the amount of \$500,000.00. As an alternative, Claimants requested rescission of the investment in the Fund along with prejudgment interest to make them whole. Claimants also requested that they be awarded prejudgment interest/lost opportunity damages, their attorneys' fees and costs of the arbitration, and punitive damages, as well as such other relief as the Panel deems appropriate.

Respondents requested that Claimants' claims be dismissed with prejudice and that Respondents be awarded their costs and such other relief as the Panel deems appropriate. Respondents also requested that the Panel recommend that Claimants' claims be expunged from Mr. Lowi's and Mr. Evans' CRD records.

### **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. Respondent Stone & Youngberg, LLC is solely liable to and shall pay Claimants the sum of \$250,000.00 in compensatory damages.
2. All claims by Claimants against Respondents David Lowi and William Evans, III are denied.
3. Respondents David Lowi's and William Evans, III's request that Claimants' claims be expunged from their CRD records is denied.
4. Each party shall bear its own costs, including attorney's fees.
5. Any and all relief not specifically addressed herein, including punitive damages, is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

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### **Filing Fees**

FINRA Dispute Resolution assessed a filing fee\* for each claim:

Initial claim filing fee = \$1,425.00

\*The filing fee is made up of a non-refundable and a refundable portion.

### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Stone & Youngberg, LLC is a party.

Member surcharge = \$1,700.00  
 Pre-hearing process fee = \$ 750.00  
 Hearing process fee = \$2,750.00

### **Contested Motion for Issuance of a Subpoena Fees**

Fees apply for each decision on a contested motion for the issuance of a subpoena.

One (1) Decision on a contested motion for the issuance of a subpoena  
 One (1) arbitrator @ \$200.00 = \$200.00  
 Total Contested Motion for Issuance of Subpoenas Fees = \$200.00

1. The Panel has assessed \$100.00 of the contested motion for issuance of subpoenas fees jointly and severally to Claimants.

2. The Panel has assessed \$100.00 of the contested motion for issuance of subpoenas fees jointly and severally to Respondents.

### **Hearing Session Fees and Assessments**

The Panel has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) Pre-hearing sessions with a single arbitrator @ \$450.00/session = \$1,350.00  
 Pre-hearing conferences: October 31, 2008 1 session  
 November 14, 2008 1 session  
 December 19, 2008 1 session

One (1) Pre-hearing session with Panel @ \$1,125.00/session = \$1,125.00  
 Pre-hearing conference: June 17, 2008 1 session

Ten (10) hearing sessions @ \$1,125.00/session = \$11,250.00  
 Hearing Dates: January 5, 2009 2 sessions  
 January 6, 2009 2 sessions  
 January 7, 2009 2 sessions  
 January 8, 2009 2 sessions  
 January 9, 2009 2 sessions

Total Hearing Session Fees = \$13,725.00

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- 1. The Panel has assessed \$6,862.50 of the hearing session fees jointly and severally to Claimants.
- 2. The Panel has assessed \$6,862.50 of the hearing session fees jointly and severally to Respondents.

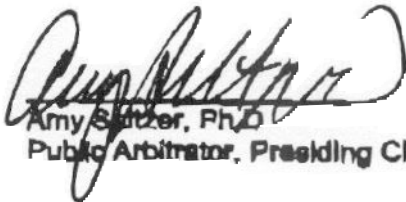
All balances are payable to FINRA Dispute Resolution and are due upon receipt.

**ARBITRATION PANEL**

Amy Seltzer, Ph.D.      -  
 Walter J. Huntley, III      -  
 Alexander L. Mazour      -

Public Arbitrator, Presiding Chairperson  
 Public Arbitrator  
 Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
 Amy Seltzer, Ph.D.  
 Public Arbitrator, Presiding Chairperson

1/23/09  
 Signature Date

\_\_\_\_\_  
 Walter J. Huntley, III  
 Public Arbitrator

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

\_\_\_\_\_  
 Alexander L. Mazour  
 Non-Public Arbitrator

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

1/23/09  
 Date of Service (For FINRA Dispute Resolution use only)

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1. The Panel has assessed \$6,862.50 of the hearing session fees jointly and severally to Claimants.

2. The Panel has assessed \$6,862.50 of the hearing session fees jointly and severally to Respondents.

All balances are payable to FINRA Dispute Resolution and are due upon receipt.

**ARBITRATION PANEL**

Amy Seltzer, Ph.D	-	Public Arbitrator, Presiding Chairperson
Walter J. Huntley, III		Public Arbitrator
Alexander L. Mazour	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Amy Seltzer, Ph.D  
Public Arbitrator, Presiding Chairperson

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

Walter J. Huntley  
Walter J. Huntley, III  
Public Arbitrator

1-16-09  
Signature Date

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Alexander L. Mazour  
Non-Public Arbitrator

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

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Date of Service (For FINRA Dispute Resolution use only)

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Arbitration No. 08-00928  
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- 1. The Panel has assessed \$6,862.50 of the hearing session fees jointly and severally to Claimants.
- 2. The Panel has assessed \$6,862.50 of the hearing session fees jointly and severally to Respondents.

All balances are payable to FINRA Dispute Resolution and are due upon receipt.

**ARBITRATION PANEL**

Amy Seltzer, Ph.D	-	Public Arbitrator, Presiding Chairperson
Walter J. Huntley, III	-	Public Arbitrator
Alexander L. Mazour	-	Non-Public Arbitrator


**Concurring Arbitrators' Signatures**

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Amy Seltzer, Ph.D  
Public Arbitrator, Presiding Chairperson

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Signature Date

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Walter J. Huntley, III  
Public Arbitrator

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Signature Date

  
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1/16/09  
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Signature Date

1/23/09

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