

NASD DISPUTE RESOLUTION AWARD
NASD DISPUTE RESOLUTION, INC.

CASE: 00-00787

Hisako Rooney, claimant vs. Mony Securities, respondent

ATTORNEYS:

Claimant, Hisako Rooney, appeared through Charles W. Austin, Jr., Esq., Richmond VA

Respondent, Mony Securities, appeared through John A. Bender, Jr., Esq., of the firm of
Weiss, Jensen, Ellis & Howard, Seattle WA

DATE FILED: February 22, 2000

CASE SUMMARY: Claimant alleged that Respondent provided unsuitable investment advice with respect to the purchase of a Pilgrim Adjustable Rate Securities Trust. Claimant further alleged that the acts and omissions of Respondent's agent constituted actual and constructive common law fraud, breach of fiduciary duty, gross negligence, violations of the Washington Securities Act and violations of various NASD Conduct Rules.

ARBITRATOR'S REPORT:

I. Facts.

Claimant and her daughter, Katherine Portis, met with Michael Hennessey, Respondent's representative, in the summer of 1994. Ms. Portis had a general power of attorney from Claimant. Claimant had obtained \$100,000.00 from the sale of her residence. She had no prior investment experience and needed the money in approximately one year to build another home. After reviewing various funds, Claimant decided to invest \$50,000.00 in Pilgrim Adjustable Rate Securities Trust IV ("Fund"), with a dividend reinvestment plan, and did so on August 16, 1994. There is a dispute as to whether a prospectus was provided; however, Claimant acknowledged receipt of the Prospectus in her new account application.

Prior to August, 1994, there had been some press adverse to Pilgrim, although not specifically directed to this Fund. There is no evidence that this information was known to Respondent at the time of Claimant's purchase.

In the Fall of 1994, Fed rate hikes led to disaster in the ARM market. This Fund did not recover. Claimant liquidated her position on May 19, 1995, with a loss of \$18,004.07.

In late February or early March, 1997, Claimant received a notice of a class action against Pilgrim regarding Pilgrim ARM funds. This claim was initiated in June, 1999, alleging Breach of Fiduciary Duty, Gross Negligence, Common Law Fraud, violations of the Washington Securities Act, and violations of NASD Conduct Rules.

II. Respondent's Request for Live Hearing.

Respondent requests a live hearing because the claim exceeds the parameters for a simplified arbitration on the pleadings and because Claimant's credibility is a significant issue. This request is denied. The punitive damage request does not bring the claim outside the jurisdictional limit of \$25,000.00 and the arbitrator has sufficient information on which to base his decision.

III. Respondent's Motion to Dismiss Based on the Statute of Limitations.

Respondent asserts a three-year statute of limitations as to all State of Washington claims, arguing that Claimant's damages were incurred May 19, 1995, putting her on inquiry notice of a potential claim and requiring her to exercise due diligence to determine the bases of her loss. Claimant argues that she did not have notice until she received the class action notice in 1997, at which time she knew the essential elements of her claim.

Respondent's motion to dismiss as to the Washington claims is granted. The class action notice related to claims against Pilgrim, not Respondent. Claimant knew of her losses in May, 1995, and failed to make reasonable inquiry to determine the reason for those losses. Certainly, this should have been accomplished by late-1995.

IV. Claimant's Claims on the Merits.

Because some non-Washington claims remain, I will decide all of these claims on their merits. Claimant's claims are based on exhaustive research of the history and demise of this Fund and other Pilgrim funds, including press reporting. It is clear that this Fund was poorly managed and carried higher risk than most ARM funds, and that Polomba Weingarten, who ran the Pilgrim funds, had a poor reputation in the financial community. With benefit of 20/20 hindsight, this Fund was not a suitable investment for Claimant.

However, we must focus on the situation as it existed in August, 1994. Respondent was not the issuer or underwriter of the Fund, they were acting solely in the capacity of a broker-dealer. Respondent was not required to exhaustively research every investment that they recommended, nor could they be expected to rely on mere press reporting. Respondent was expected to rely on the Prospectus, annual reports, and the Fund's performance in the marketplace. It is clear that ARM Funds were a popular investment vehicle in the early 1990's and were considered a relatively conservative investment. The rate hikes in late-1994 caused a generalized disruption in the mortgage market and significant losses to mortgage based funds, but the Fed's actions could not be anticipated when Claimant purchased this Fund.

Further, Claimant purchased other funds with the remaining \$50,000.00. I agree with Respondent that, overall, this was not a high risk portfolio as of August, 1994.

In conclusion, I find no evidence of misrepresentations or omissions or breaches of fiduciary duty on the part of Respondent. Unfortunately, Claimant lost money that she could not afford to lose. That loss resulted from the Fed rate hikes and Pilgrim's poor management, none of which can be attributed to Respondent. Claimant's claim, if any, is against Pilgrim.

Therefore, Claimant has failed to meet her burden of proof and her case is dismissed in its entirety. The NASD fee is assessed against Claimant.

Claim Data	Award Data
Claim: \$18,000.00	Award: \$0.00
Punitive: Unspecified	Punitive: \$0.00
Interest: Unspecified	Interest: \$0.00
Atty Fees: Unspecified	Atty Fees: \$0.00
Filing Fees: Unspecified	Filing Fees: \$0.00

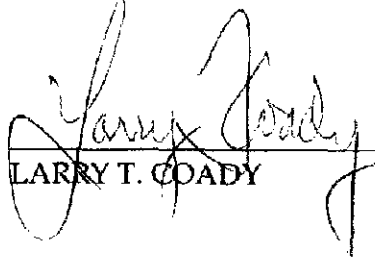
AWARD: The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) The claims of claimant are dismissed in their entirety. 2) All requests for attorney fees are denied. 3) All requests for punitive damages are denied. 4) All other requests for relief are denied. 5) The \$425.00 filing fee previously deposited with NASD Dispute Resolution, Inc. by the claimant shall be retained by NASD Dispute Resolution, Inc.

OTHER FEES: Pursuant to Rule 10333 of the Code, respondent has paid to NASD Dispute Resolution, Inc. the \$400.00 member surcharge previously invoiced.

Page 4
Award 00-00787

AFFIRMATION

I, LARRY T. COADY, do hereby affirm, upon my oath as arbitrator that I am the individual described herein who excuted this instrument, which is my oath and award.


LARRY T. COADY

October 30, 2000

Date of Award