

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimants

William Perry and Virginia Perry

v.

04-06948

Minneapolis, Minnesota

Respondent

New England Securities Corporation

Nature of Dispute: Customers v. Member

REPRESENTATION OF PARTIES

William Perry and Virginia Perry ("Claimants") were represented by Amy M. Leonetti, Esq., and Harvey H. Eckart, Esq., of Eckart and Leonetti, St. Paul, Minnesota.

New England Securities Corporation ("Respondent") was represented by Stephanie J. Cohen, Esq., of McCarter & English, LLP, Newark, New Jersey.

CASE INFORMATION

The Statement of Claim was filed on or about September 16, 2004. The Submission Agreement of Claimants was signed on or about September 9, 2004.

The Statement of Answer was filed by Respondent, New England Securities Corporation, on or about December 9, 2004. The Submission Agreement of Respondent, New England Securities Corporation, was signed on or about October 28, 2004.

CASE SUMMARY

Claimants asserted causes of action including the following: breach of contract, negligence, breach of fiduciary duty, failure to supervise, respondeat superior liability, and consumer fraud. The causes of action related to Claimants' allegations that their financial advisor recommend that they do a cash-out refinance on their home and use those proceeds to invest in unspecified high-risk long-term growth mutual funds. Claimants alleged that these investments were unsuitable for them given their investment objectives and risk tolerance. Claimants alleged that their financial advisor also sold them other unsuitable investments, including: two flexible premium adjustable life policies; six variable life policies; three variable annuities and three limited partnerships. Claimants further alleged that Respondent is responsible for the actions and unsuitable investments made by Claimants' financial advisor, its employee.

Respondent denied the allegations set forth in the Statement of Claim and asserted affirmative defenses including the following: Claimants were fully advised and understood the nature of the investments they purchased in their accounts; Claimants' claims are barred by the doctrines of estoppel, assumption of risk and ratification; Claimants failed to act with due diligence in connection with their investments and failed to timely disaffirm the transactions and acts complained of in their Statement of Claim; Claimants' own decisions, conduct, and/or negligence proximately caused their losses, and therefore Claimants' losses should be barred in whole or in proportion to their negligence that contributed to their losses; and Claimants are not entitled to recover against New England because Respondent acted in good faith at all times and exercised reasonable diligence.

RELIEF REQUESTED

Claimants requested an award of \$92,775 in compensatory damages, plus punitive damages, interest, attorneys' fees and any other relief the panel deemed appropriate.

Respondent requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

OTHER ISSUES CONSIDERED & 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. In either case, the parties have agreed to receive conformed copies of the award while the originals remain on file with NASD Dispute Resolution ("NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, New England Securities Corporation, is liable for and shall pay to Claimants, William Perry and Virginia Perry, the sum of Seventy Thousand Dollars and No Cents (\$70,000.00) in compensatory damages;
2. Respondent, New England Securities Corporation, is liable for and shall pay to Claimants, William Perry and Virginia Perry, the sum of Twenty Thousand Dollars and No Cents (\$20,000.00) in attorneys' fees pursuant to MN Stat § 45.026; and
3. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, are denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee = \$ 225

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. In this matter, the member firm is New England Securities Corporation.

Member surcharge = \$ 1,100
Pre-hearing process fee = \$ 750
Hearing process fee = \$ 1,700

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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 Panel x \$ 750 = \$ 750

Pre-hearing conference: 03/07/2005 1 session

Four (4) Hearing sessions with Panel x \$ 750 = \$ 3,000

Hearing Dates: 09/12/2005 2 sessions
09/13/2005 2 sessions

Total Forum Fees = \$ 3,750

The Arbitration Panel has assessed \$ 3,750 of the forum fees to New England Securities Corporation.

FEE SUMMARY

Claimants, William Perry and Virginia Perry, are jointly and severally is liable for:

<u>Initial Filing Fee</u>	= \$ 225
<u>Total Fees</u>	= \$ 225
<u>Less payments</u>	= \$ 975
Balance Refunded By NASD Dispute Resolution	= \$ 750

Respondent, New England Securities Corporation, is liable for:

Member Fees	= \$ 3,550
<u>Forum Fees</u>	= \$ 3,750
<u>Total Fees</u>	= \$ 7,300
<u>Less payments</u>	= \$ 3,550
Balance Due NASD Dispute Resolution	= \$ 3,750

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

ARBITRATION PANEL

Katherine M. Merrill, Esq. - Public Arbitrator, Presiding Chair

Duane W. Krohnke - Public Arbitrator

James K. Langdon, II, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

Katherine M. Merrill, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Duane W. Krohnke
Public Arbitrator

Signature Date

James K. Langdon, II, Esq.
Non-Public Arbitrator

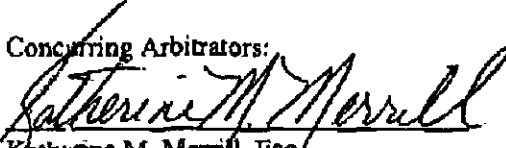
Signature Date

9/22/05
Date of Service (NASD use only)

ARBITRATION PANEL

Katherine M. Merrill, Esq. - Public Arbitrator, Presiding Chair
Duane W. Krohnke - Public Arbitrator
James K. Langdon, II, Esq. - Non-Public Arbitrator

Concurring Arbitrators:


Katherine M. Merrill, Esq.
Public Arbitrator, Presiding Chair

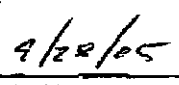

Signature Date

Duane W. Krohnke
Public Arbitrator

Signature Date

James K. Langdon, II, Esq.
Non-Public Arbitrator

Signature Date



Date of Service (NASD use only)

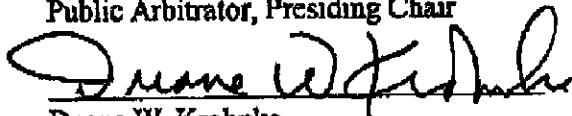
ARBITRATION PANEL

Katherine M. Merrill, Esq. - Public Arbitrator, Presiding Chair
Duane W. Krohnke - Public Arbitrator
James K. Langdon, II, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

Katherine M. Merrill, Esq.
Public Arbitrator, Presiding Chair

Signature Date



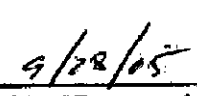
Duane W. Krohnke
Public Arbitrator



Signature Date

James K. Langdon, II, Esq.
Non-Public Arbitrator

Signature Date



Date of Service (NASD use only)

ARBITRATION PANEL

Katherine M. Merrill, Esq. - Public Arbitrator, Presiding Chair
Duane W. Krohnke - Public Arbitrator
James K. Langdon, II, Esq. - Non-Public Arbitrator

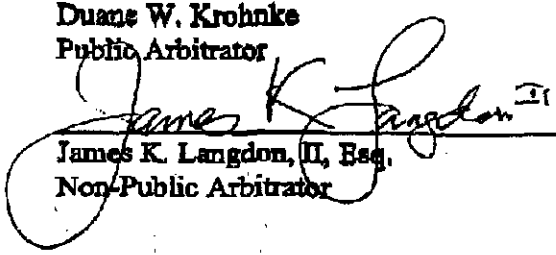
Concurring Arbitrators:

Katherine M. Merrill, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Duane W. Krohnke
Public Arbitrator

Signature Date



James K. Langdon, II, Esq.
Non-Public Arbitrator

9-23-05

Signature Date

9/22/05

Date of Service (NASD use only)