

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

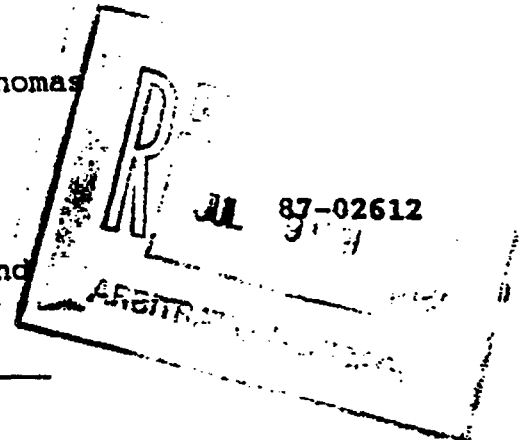
Catherine Lacey Rosemary Lacey and
Arlene Beyna, Custodian for Terry and Thomas
Beyna

Claimants

vs.

Mosely Hallgarten, Estabrook & Weeden and
Bruce P. Bagge

Respondents



REPRESENTATION OF PARTIES

Claimants Catherine Lacey, Rosemary Lacey and Arlene Beyna were represented by Wayland B. Cedarquist, Esq., Chicago, Illinois. Respondent Bruce Bagge was represented by Phillip M. Goldberg, Esq. of Coffield, Ungaretti, Harris & Slavin, Chicago, Illinois.

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about December 15, 1987. Claimants Terry and Thomas Beyna ("Claimants") alleged that they purchased what was represented to them as U.S. Treasury Bonds from Respondents Bruce P. Bagge ("Bagge") and Mosely Hallgarten, Estabrook & Weeden, Inc. ("Mosely Hallgarten"). Claimants alleged that Bagge represented that the principal was absolutely guaranteed, no commissions were ever mentioned and no shares were ever mentioned. Claimants also alleged that no documents were presented to them at the time of purchase.

In a statement of answer filed with the NASD on or about July 1, 1988 Mosely Hallgarten and Bagge alleged that it was clear from the literature provided prior to Claimants' investment, the confirmations and Mosely account statements that Claimants were aware or should have been aware that the securities they purchased were not U.S. Treasury Bonds but shares in a mutual fund comprised of U.S. Government Securities. Bagge and Mosely Hallgarten denied that Bagge ever represented that the principal was guaranteed. Instead, it was alleged that he indicated that the principal of the underlying U.S. Government Securities which comprised the mutual fund may be guaranteed by the U.S. Government. Respondents asserted various affirmative

defenses including, but not limited to, estoppel, wavier, laches, ratification, assumption of risk and failure to mitigate damages.

Claimants amended their claims on or about January 5, 1990 adding a request for damages as a consequence of the sale by Bagge of participations in American Income Partners #2 and American Income Partners #3, both limited partnerships. Claimants alleged that Bagge misrepresented that Claimants would get their principal back in four years. Bagge also allegedly stated "it is tax-free and you will not have to report it as income" and "many major companies are part of this - it is very safe". Claimants alleged Bagge knew that they were not knowledgeable about limited partnerships and not suitable for these types of investments. Claimants dismissed Mosely Hallgarten by a second amendment filed with the NASD on February 2, 1990 as this respondent had entered bankruptcy.

RELIEF REQUESTED

Claimants requested damages of \$42,716.57, plus interest for the mutual fund. Claimants requested \$84,500.00 for the limited partnership investments. Mosely Hallgarten and Bagge requested dismissal of the claims in their entirety.

OTHER ISSUES

Mosely Hallgarten filed for bankruptcy under Chapter 11 of the federal bankruptcy laws in or about January of 1989. Accordingly, the automatic stay provisions of the federal bankruptcy laws went into effect. The NASD dismissed Mosely Hallgarten as a respondent in the matter and the arbitration panel did not consider the Claimants' claims asserted against Mosely Hallgarten. Claimants filed a stipulation dismissing the claim of Arlene Beyna Custodian for Thomas and Terry Beyna with the NASD on or about February 13, 1989. Accordingly, the panel did not consider Beyna as a party to the hearing on May 23, 1991.

PROCEDURAL MATTERS

On May 23, 1991 in Chicago, Illinois during a hearing lasting a total of two (2) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on December 10, 1987 by Claimants Catherine Lacey, Rosemary Lacey and Arlene Beyna, on May 1, 1990 by Thomas Lacey and on July 1, 1988 by Respondent Bruce P. Bagge.

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 original (s) remain on file with the NASD.

AWARD

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. The panel finds no liability in connection with the sale by Bagge to Claimants of National Federal Securities Trust. The panel finds no damages in connection with the sale by Bagge of American Income Partners to Claimants. The Claims asserted against Bagge by Claimants are therefore denied and dismissed in their entirety.

2. The parties shall each bear their own costs, expenses and attorney's fees incurred in this matter; and

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the hearing session deposit in the amount of \$400.00 previously deposited with the NASD by the Claimants. Respondent Bagge is assessed additional forum fees of \$850.00 and Claimants are assessed additional forum fees of \$450.00. These fees are payable to the NASD.

Dated:

July 9, 1991

Sheldon I. Saitlin
Presiding Chair
Public Arbitrator

Jerome M. Katz
Public Arbitrator

Thomas Sargent
Industry Arbitrator

Date Served: 7-22-91

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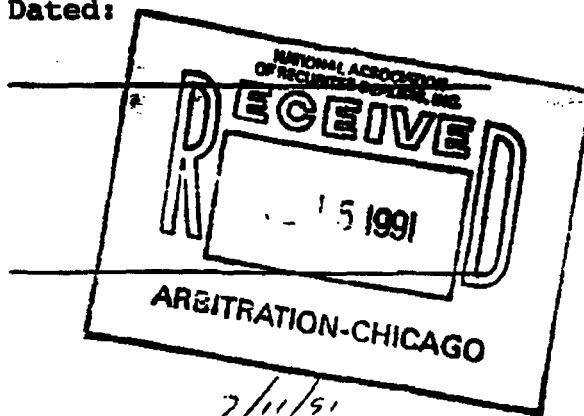
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Jerome M. Katz
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Public Arbitrator

Date Served: 7-22-91

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