

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

RECEIVED  
OCT 10 1989  
NASD, INC.

In the Matter of the Arbitration Between

John Benvenuto and  
Luigina Nicora

Claimants

vs.

Great Western Financial Securities Corporation and Jill Irwin

Respondents

CASE NO. 88-02531

SUMMARY OF ISSUES

The Claimants filed this claim with the NASD on August 10, 1988 against the Respondent brokerage firm and its account executive and alleged breach of fiduciary duty, misrepresentation and non-disclosure of commissions in connection with the recommended investment in a Putnam Mutual Fund. Specifically, Claimants alleged that Respondents failed to disclose the risk of principal and the commissions charged; and that Respondents misrepresented the length of time the Fund had been in existence and the fluctuations in the share price.

Respondent Great Western Financial Securities Corporation denied the allegations and maintained that Claimants were provided with a prospectus on the mutual fund at the time of the investment which explained the nature and objective of the fund and identified the accompanying sales charge; that all required disclosures were made to Claimants; and that the damages alleged were the result of the bond market decline.

Respondent Jill Irwin denied the allegations and maintained that the investments were fully discussed with Claimants prior to purchase, specifically with respect to share price fluctuations, risk, and commissions; and that the recommended investments were suitable to the Claimants investment objectives of growth and income.

DAMAGES AND RELIEF REQUESTED

Claimants requested damages in the amount of \$8,566.98. Respondent requested dismissal of the claim.

DAMAGES AND RELIEF AWARDED

On September 26, 1989 the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on September 8, 1988 and by Respondents Great Western on November 18, 1988 and Jill Irwin on November 14, 1988. The hearing was held in San Francisco, California and lasted one session. In addition, pursuant to Section 32 of the NASD Code of Arbitration Procedure, on September 22, 1989 a pre-hearing conference was held between the parties

and/or counsel, the arbitrator, and a NASD Arbitrator Administrator. The pre-hearing conference is deemed to be one hearing session.

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


1. All claims are dismissed.
2. The parties shall each bear their respective costs including attorneys' fees.
3. Pursuant to Section 43 of the National Association of Securities Dealers, Inc. ("NASD") Code of Arbitration Procedure, the NASD shall retain the \$200.00 filing fee previously deposited by the Claimant.

OTHER ISSUES

Upon request of Respondent Jill Irwin and stipulation by all parties and the arbitrator, Irwin participated in the hearing in this matter by telephone conference.

DATE SERVED: 10/12/89

ARBITRATOR CONCURRING

  
Rita H. Schuman