

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
)
RICHARD M. GOLDSTEIN & JEFFREY S. TANEN,)
TRUSTEE, GOLDSTEIN & TANNEN, P.A. PROFIT SHARING,)
)
) Claimants,)
) Case #89-00309
vs.) Award
)
THOMSON MCKINNON SECURITIES, INC.,)
) Respondent.)
)

Heard before the members of the Arbitration Panel:

Mr. Guthrie F. Crowe
Ms. Judy Avey
Mr. Terrence W. Grant

CASE SUMMARY

This claim was filed with the NASD, Inc. on January 30, 1989. The hearing was conducted in Fort Lauderdale, Florida on March 8, 1990 with a total of two (2) sessions.

Claimants Richard M. Goldstein and Jeffrey S. Tanen, as Trustees of the Goldstein and Tanen, P.A. Profit Sharing and Money Purchase Pension Plan and Trust ("Goldstein and Tanen") alleged that Respondent Thomson McKinnon Securities, Inc. ("Thomson") was liable for misrepresentation and negligence. Specifically, Claimants alleged that: Respondent misrepresented that an investment in Thomson McKinnon Government Fund would have a specific rate of return of 9 1/2 percent; there would be no buying and selling of the bonds; and that there would be no principal reduction.

Respondent denied liability and alleged that: Claimants had experience in investments; Claimants were informed of the possibility of fluctuation of value both prior to investing and in the Monthly Statements and Confirmations subsequent to investing; Goldstein informed Respondent's employee that value fluctuation was not a concern; the investment was suitable for Claimants; Respondent made no guarantees of performance; Respondent did not misrepresent any facts; Claimants are estopped from making a claim and ratified the purchases; Respondent did not owe a fiduciary duty to the plan as it acted only as an agent of the Trustees; and Respondent was not negligent or fraudulent in its conduct. Respondent asserted a counterclaim against the Trustees for indemnification or contribution.

RELIEF REQUESTED

Claimant requested damages in the amount of \$21,026.67 plus interest, attorney's fees and other costs. Respondent requested dismissal of the claim or, in the alternative, indemnification or contribution.

AWARD

On March 8, 1990, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on March 27, 1989, and by Respondent on May 25, 1989. 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. 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 the NASD, Inc.
2. Respondent Thomson is not liable to Claimants, and, therefore, the claim against it is hereby dismissed.
3. Pursuant to Section 43 of the Code of Arbitration Procedure, the Arbitrators have assessed Claimants forum fees in the amount of Eight Hundred and 00/100 (\$800.00) Dollars. The National Association of Securities Dealers, Inc. shall retain the Four Hundred and 00/100 (\$400.00) Dollar filing fee previously deposited by the Claimant as partial satisfaction of such forum fees.
4. Claimants' request for attorney's fees is hereby dismissed in all respects.
5. Claimants are not liable to Respondent, and, therefore, the counterclaim against them is hereby dismissed in all respects.
6. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including attorney's fees.

OTHER ISSUES

None.

ARBITRATORS CONCURRING

Mr. Guthrie F. Crowe
Mr. Terrence W. Grant
Ms. Judy Avey

Dated: March 19, 1990