

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)	
John S. Forbes)	
)	
Claimant)	AWARD
vs.)	
)	NASD #89-01185
Frank Kubica)	
)	
Respondent)	

SUMMARY OF ISSUES

This case was filed with the National Association of Securities Dealers, Inc. ("NASD") on April 21, 1991. Claimant alleged that Respondent breached his fiduciary duty in recommending securities transactions which were not suitable to Claimant's stated investment goals and objectives of conservative income and capital preservation. Specifically, Claimant alleged that Respondent recommended and effectuated transactions to liquidate Claimant's tax-free bonds and reinvest the proceeds into limited partnerships which were not tax-free, produced little or no income, and were non-liquid. Claimant waived his allegation that the account was churned at the hearing.

Respondent denied the allegations and maintained that he had a reasonable basis to believe all investments recommended to Claimant were suitable for Claimant's investment objectives, financial situation, needs and experience as disclosed by Claimant; that he discussed the risks and rewards of each investment with Claimant prior to each purchase; and that all investments were made pursuant to a written prospectus and Claimant's signing of a subscription agreement. Respondent alleged the affirmative defenses of ratification, estoppel, failure to mitigate, failure to state a cause of action in law or equity, and that the claims asserted are time-barred under the applicable statutes of limitations.

DAMAGES AND RELIEF REQUESTED

Claimant requested damages in the amount of \$320,000, interest on the account at the highest legal rate, attorneys' fees, expert witness fees and special damages, punitive damages, and costs of arbitration.

Respondent requested dismissal of the claim in its entirety and costs.

DAMAGES AND RELIEF AWARDED

On April 30, 1991 the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on March 29, 1989; Respondent Frank Kubica did not file a submission agreement but is subject to the jurisdiction of this arbitration pursuant to Sections 1 and 12 of the Code of Arbitration Procedure and appeared at the hearing voluntarily with counsel.

The hearing was conducted in Los Angeles, California and lasted two (2) sessions. 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 as follows:

1. Each and every claim is denied and dismissed.
2. The parties shall each bear their respective costs including attorneys' fees.
3. In accordance with Section 43 of the NASD Code of Arbitration Procedure:
 - a. the NASD shall retain the \$750 filing fee previously deposited by the Claimant and shall waive the outstanding balance due of \$250; and
 - b. the NASD shall refund the \$1,000 adjournment fee deposited by the Respondent in accordance with Section 30(b) of the Code.

OTHER ISSUES

This claim originally included Thomson McKinnon Securities, Inc. as a Respondent. On March 28, 1990 Thomson McKinnon Securities, Inc. filed a voluntary petition in bankruptcy pursuant to Chapter 11, in the U.S. Bankruptcy Court in the Southern District of New York. Accordingly, under Section 362 of the Bankruptcy Code (11 U.S.C. Section 362), all proceedings against the petitioner, including the present action, were automatically stayed until further order of the Bankruptcy Court.

Claimant withdrew his motion to bar evidence at the hearing.

Claimant exercised a challenge for cause at the arbitration hearing against one of the appointed arbitrators based upon a previously undisclosed conflict. Another arbitrator was appointed the morning of the hearing and he was accepted by both parties without objection.

The parties stipulated to the execution and service of the award in counterpart copies.

ARBITRATORS CONCURRING

DATE SERVED: 5/13/91

Sandra L. Malek



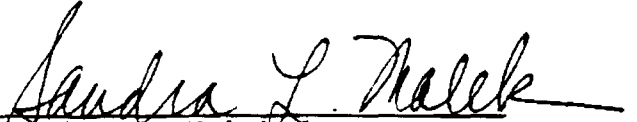
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