

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)	
Peter Musto and)	
Judith Musto Hachman, Trustees)	
Claimants)	
vs.)	AWARD
)	NASD #89-02711
Dean Witter Reynolds, Inc.,)	
Robert Grunigen and)	
Charles Cabrera)	
Respondents)	

SUMMARY OF ISSUES

This case was filed with the National Association of Securities Dealers, Inc. ("NASD") on September 28, 1989. Claimants are the surviving trustees and principal beneficiaries of a living trust established on May 8, 1986 by their mother, Kathleen Johnson Musto Hartness who died on May 16, 1988. Claimants alleged that Respondents breached their statutory, contractual and fiduciary duties owed to Mrs. Hartness individually and to the Trust, by recommending investments which were unsuitable for either the financial and tax situation of Mrs. Hartness personally or for the estate planning objectives of the Trust. Specifically, Claimants alleged that the recommended investments in real property limited partnerships, a restaurant chain limited partnership, two annuities, and various mutual funds were not suitable to the investment objectives of the Trust or of the beneficiaries of the Trust. Claimants further alleged that Respondents failed to properly monitor the portfolio of investments.

Respondents denied the allegations and maintained that the determination of suitability is based upon their client's investment objectives to maximize her income and minimize her tax liability and that the recommended investments and portfolio achieved those objectives. Respondents further maintained that all investment decisions in the account were ultimately made by Mrs. Hartness who maintained her account with her broker for over twenty-two years without complaint, dissatisfaction, or objection by her or by her many advisers including Claimants. Respondents alleged the affirmative defenses of waiver and estoppel, comparative negligence, and that the claims are barred by the applicable statutes of limitation.

DAMAGES AND RELIEF REQUESTED

Claimants requested damages of \$1,225,072 calculated as the difference between the average potential return and the actual return, interest at the legal rate from May 15, 1988, and punitive damages equal to the loss of income.

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

DAMAGES AND RELIEF AWARDED

On January 1, 1991 a pre-hearing conference was held pursuant to Section 32 of the Code of Arbitration Procedure between counsel for the parties, the Chairman, and a representative from the NASD which lasted one session.

On March 18, 19, 20, 21, 22, 1991 and April 16, 17, 1991 the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants Peter Musto on September 25, 1989 and Judith Musto Hachman on September 22, 1989 and by Respondents Dean Witter Reynolds, Inc. on January 17, 1990, Robert Grunigen on January 19, 1990, and Charles Cabrera on April 3, 1990.

The hearing was conducted in San Francisco, California and lasted fourteen 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 hereby denied.
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 \$1,000 filing fee previously deposited by the Claimants;
 - b. Claimants are jointly and severally assessed forum fees in the amount of \$6,000 to be paid to the NASD directly; and
 - c. Respondent Dean Witter Reynolds, Inc. is assessed forum fees in the amount of \$6,000 to be paid to the NASD directly.

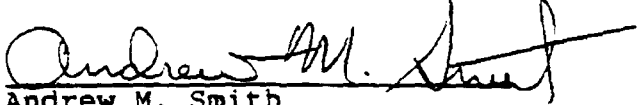
OTHER ISSUES

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

ARBITRATORS CONCURRING

DATE SERVED: 05/06/91

John P. Sparrow


Andrew M. Smith

William A. Hage