



N.A.S.D. AWARD

Arbitration

National Association of  
Securities Dealers, Inc.  
NASD Financial Center  
33 Whitehall Street  
New York, New York 10004

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Judith Kalina

89-03172

Name of Respondent

Mark Fialkov

CASE SUMMARY

Claimant, Judith Kalina, alleged that Respondent, Mark Fialkov, recommended unsuitable investments and made misrepresentations regarding the nature and consequences of the sale of these investments. Claimant also contended that Respondent was untruthful regarding the amount of commissions he would receive.

Respondent maintained that Claimant stated her objectives were preservation of capital and a high yield, as she was not employed. Respondent asserted that he recommended highly rated bonds and suggested that investing in mutual funds would reduce risk through diversity. Respondent stated he recommended the Putnam convertible Income Growth Trust Fund because it had a long history of professional investment management and Claimant would receive a reduced sales charge. Respondent also averred that he sold some of these bonds (at Claimant's request) at a loss and had informed Claimant of the approximate loss prior to the sale. Finally, Respondent maintained that in each instance Claimant received a prospectus in advance of the purchase.

RELIEF REQUESTED

Claimant, Judith Kalina, requested actual damages of \$137,000.00, plus interest. Respondent, Mark Fialkov, requested the claim be dismissed in all respects.

AWARD

On September 25, 1990, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by the Claimant, Judith Kalina, on November 5, 1989, and by the Respondent, Mark Fialkov, on May 18, 1990. The hearing was held in New York City at the NASD,



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Inc. and consisted of two (2) hearing 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 for determination as follows:

1. Respondent, Mark Fialkov, hereby is liable and shall pay to the Claimant, Judith Kalina, the sum of \$22,153.00, interest specifically excluded;
2. All other claims by the Claimant are hereby dismissed;
3. The parties shall each bear their respective costs, including attorneys' fees;
4. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$750.00 filing fee previously deposited by the Claimant. In addition, Claimant is hereby liable for the sum of \$750.00 to represent forum fees. However, Claimant's filing fee shall be used to offset the amount owed for forum fees. Respondent is hereby liable and shall pay to the NASD, Inc. the sum of \$750.00 to represent forum fees.

Arbitrator(s) Signature

/s/  
Virginia Handal

/s/  
Martin J. Siegel

/s/  
Joseph E. DaGrosa

September 25, 1990