

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between

Name of Claimant (s)

William H. MacMillan and Ann MacMillan

90-00036

Name of Respondent(s)

Investment Direction Associates, Inc.

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CASE SUMMARY

Claimants alleged that Respondent represented to them that it would select a brokerage firm for the Claimants that would meet their needs and objectives, that any capital gains taxes would be held to a minimum and would not exceed \$20,000, that the Respondent would monitor the performance of the selected broker dealer, and that only a portion of the Claimant's assets would be placed with one broker dealer until that broker's performance was monitored. Claimants further alleged that the Respondent failed to meet these representations, and the selected broker dealer sold virtually all of the Claimant's assets without regard to tax consequences. Respondent maintained that no signed, written contract existed between it and the Claimants, that the Claimants agreed to the selected broker dealer, and that the Respondent never guaranteed results to the Claimants regarding the management of their money. Respondent further maintained that the Claimants did not suffer an economic loss and assumed the risk that the performance of their accounts might under-perform the performance of the market.

RELIEF REQUESTED

Claimants requested damages of \$250,000.00. Respondent requested that the claims of the Claimant be dismissed.

Pursuant to an Order of the United States District Court for the Northern District of Alabama, Western Division, the Court ordered for the above parties to arbitration based upon

the Respondents's Motion to Compel before the Court. Further, the Court ordered the arbitration panel to first determine the scope of the Claimant's agreement with Shearson Lehman Brothers, Inc. and whether this matter was arbitrable.

On October 25, 1990, in Atlanta, Georgia, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants William and Anne MacMillan on February 12, 1990 and by the Respondent Investment Direction Associates, Inc. on March 5, 1990. The initial Statement of Claim was filed on December 26, 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. Pursuant to the Order of the United States District Court for the Northern District of Alabama, dated the 6th day of March, 1989, which, inter-alia, ordered this panel to first determine the scope of the MacMillians' agreement with Shearson Lehman Brothers, Inc. and construing this direction to mean the arbitration cause or clauses in such agreements, this panel, after hearing all testimony and seeing all exhibits offered by the parties and their counsel on this issue, holds that the subject arbitration clauses do not extend to the Respondent Investment Direction Associates, Inc., and therefore conclude this dispute between the MacMillans and the Respondent Investment Direction Associates, Inc. is not arbitrable.
2. The parties shall each bear their respective costs, including attorneys fees.
3. Pursuant to Section 43 of the Code of Arbitration Procedure, the NASD, Inc. shall refund the \$750.00 filing fee previously deposited by the Claimants as costs of the two hearing sessions conducted in this matter.

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CONCURRING ARBITRATORS

/s/  
J. Stuart Youngblood, Esq.

/s/  
Jule B. Green, Esq.

/s/  
Gregory A. Brumbeloe

Dated: January 17, 1991