

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Rod R. & Hilda S. McDonald

CASE #90-00784

Name of Respondent(s)

The Ohio Company

Heard before the members of the Arbitration Panel:

James R. Kennedy, Jr., Esq.

Public

John P. Cullen, Esq.

Public

Allison Hardage

Industry

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on March 14, 1990. Claimant, Rod and Hilda McDonald ("the McDonalds"), alleged that Respondent, The Ohio Co. ("Ohio"), was liable for: violations of Chapter 517 of the Florida Statutes; breach of fiduciary duty; negligence; and misrepresentation. Claimants alleged that Respondent's employee induced Claimants into purchasing risky and unsuitable mutual funds and misrepresented the risks of investing on margin and that such misrepresentations indirectly induced Claimants into taking out a mortgage on their home and caused losses to Claimants' retirement income.

In a Statement of Answer filed on May 21, 1990, Respondent alleged that: Claimants were informed of the risks involved in investing in the mutual funds; Claimants were informed of the mechanics of a margin account; Respondent's employee was not informed that Claimants were mortgaging their house and did not encourage them to do so; Claimants informed their broker that they were satisfied with their investments; Claimants were negligent if failing to heed the advice of their broker; and Claimants failed to mitigate their damages..

RELIEF REQUESTED

Claimants requested damages in the amount of \$61,867.29, plus interest, punitive damages, attorney's fees and costs.

Respondent requested dismissal of the claim.

AWARD

On January 18, 1991 and February 6, 1991, in Tampa, Florida, during a hearing lasting five (5) sessions, the undersigned arbitrator(s) heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on March 3, 1990 and signed by James Francis on behalf of Respondent on May 16, 1990.

After considering the pleadings, the testimony, and the evidence presented at the hearing, the arbitrators have decided 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 be entered. In either case, the parties have agreed to receive conformed copies of the Award while the original(s) remain on file with the NASD.
2. Respondent, Ohio, is found not liable and, therefore, all claims against it are hereby dismissed.
3. Claimant's request for attorney's fees, costs, interest and punitive damages is denied.

FORUM FEES

4. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$2,500 (5 sessions x \$500 per session). Claimant is hereby assessed \$1,000 for which the NASD shall retain the \$500 previously deposited in partial satisfaction thereof. Respondent is hereby assessed \$1,500 payable to the National Association of Securities Dealers, Inc.

5. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including attorney's fees.

Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrator's Signature

/s/
James R. Kennedy, Jr., Esq.

/s/
Allison Hardage

/s/
John P. Cullen, Esq.

Date of Decision: March 15, 1991