

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between )	
<u>Name of Claimant(s)</u> )	
Bessie Temelko )	
) )	
<u>Name of Respondent(s)</u> )	Case No. 90-00902
Alexander Lambros )	
Thomas Swisher )	
) )	
) )	

Heard before the members of the Arbitration Panel:

Brian G. Mooney, Esq.	Public
Richard J. Jones, III, Esq.	Public
Allison Hardage	Industry

REPRESENTATION

Claimant, Bessie Temelko ("Temelko"), was pro-se. Respondents, Alexander Lambros ("Lambros"), was represented by Alan Fedor, Esq. of Fedor & Fedor and Thomas Swisher ("Swisher"), was represented by Frank Gassler, Esq. of Fowler, White, Gillen, Boggs, Villareal and Banker, P.A.

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on April 8, 1990. Claimant alleged that Respondents were liable for: misrepresenting the safety of several investments including a mutual fund, annuity and limited partnership; and for making unauthorized trades.

In Statements of Answer filed with the NASD on September 11, 1990, and May 3, 1991, Respondent, Swisher, denied liability and alleged that: the Statutes of Limitations had run; Claimant failed to allege fraud with sufficient particularity; and failed to state a cause of action. Swisher moved, at the hearing, for dismissal of the claim against him based on the above.

In a Statement of Answer filed with the NASD on June 20, 1990, Respondent, Lambros, denied all allegations of wrongdoing and alleged that the sale of Claimant's Corporate Income Fund and the purchase of Putnam High Income Government Trust were authorized; Claimant made money from the investment;

Claimant was informed of the risks involved; and Respondent cannot be held liable for losses which were caused by market conditions. Respondent, Lambros moved, at the hearing, for dismissal of the claim against him for failure to state a claim.

#### RELIEF REQUESTED

Claimant requested damages from Swisher in the amount of \$70,000.00 and from Lambros in the amount of \$50,000.00.

Respondents requested dismissal of the claims plus costs and attorney's fees.

#### AWARD

On May 9 and 13, 1991, in Tampa, Florida, during a hearing lasting three (3) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant, on March 14, 1990, and signed by Respondents, Swisher, on May 13, 1991, and Lambros, on April 26, 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 originals remain on file with the NASD.
2. Respondent, Swisher, is found not liable and, therefore, all claims against him are hereby dismissed pursuant to Swisher's Motion to Dismiss on Statutes of Limitations grounds.
3. Respondent, Lambros, is found not liable and, therefore all claims against him are hereby dismissed pursuant to Lambros' Motion to Dismiss for Failure to State a Claim.
4. Respondents' request for attorney's fees and costs are denied.

#### FORUM FEES

5. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$1,800.00 (2 sessions x \$750.00 per session plus \$300.00 for the pre-hearing conference on May 9, 1991). Claimant is hereby assessed \$375.00 for which the NASD shall retain \$375.00 of the \$750.00 previously deposited in full satisfaction thereof. The NASD shall refund to the Claimant the balance of \$375.00 Respondent, Swisher is hereby assessed \$1,050.00 payable to the National Association of Securities Dealers, Inc. Respondent, Lambros, is hereby assessed \$375.00 payable to the National Association of Securities Dealers, Inc.

6. 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.

OTHER ISSUES

None.

Concurring Arbitrators' Signatures

/s/  
Brian G. Mooney, Esq.

/s/  
Richard J. Jones, III, Esq.

/s/  
Allison Hardage

\* Date of Decision: May 30, 1991