

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between )

Santo Mangiarelli )

Jennie Mangiarelli, JTWR0S )

Claimants )

vs. )

M.L. Stern & Co. Inc. )

Harlan Friedman )

Respondents )

AWARD

NASD #90-01075

SUMMARY OF ISSUES

Claimants alleged Respondents breached their fiduciary duty to them by placing their funds in the subordinated debentures of the Southmark Corporation and in the Franklin Age High Income Fund, both of which investments were unsuitable for Claimants given their age, financial sophistication and investment objectives. Claimants also alleged M.L. Stern & Company failed to supervise the activities of its broker, Mr. Friedman.

Respondents denied Claimants' allegations, and asserted that Claimants made their own investment decisions after lengthy discussions with their broker and after receiving prospectuses and other written materials. Respondents also asserted that the claim was barred by applicable statutes of limitation.

DAMAGES AND RELIEF REQUESTED

Claimants requested damages of \$40,260.75 plus interest, attorney's fees and costs of arbitration.

Respondents requested dismissal of all claims and an award of costs of arbitration.

DAMAGES AND RELIEF AWARDED

This claim was filed with the NASD on April 16, 1990. On January 22, 1991, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on March 23, 1990, by an authorized representative of M.L. Stern on May 22, 1990, and by Harlan Friedman on May 22, 1990. The hearing was conducted in San Diego, California and lasted two (2) 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. M.L. Stern & Company, the present custodian of the Southmark bonds, shall take ownership of the bonds.
2. M.L. Stern & Company and Harlan Friedman are jointly and severally liable for and shall pay to Claimants the sum of \$16,589.00 only.
3. The parties shall each bear their respective costs including attorneys' fees.
4. In accordance with Section 43 of the NASD Code of Arbitration Procedure, the NASD shall retain the \$750.00 filing fee previously deposited by the Claimant as an assessment of forum fees. In addition, Respondents M.L. Stern & Company and Harlan Friedman are jointly and severally assessed forum fees of \$750.00, payable to the NASD.

#### OTHER ISSUES

Respondents' assertion of a defense based on Section 340 of the California Code of Civil Procedure, subdivision (3), and Section 339 of the California Code of Civil Procedure, subdivision (1) is denied.

#### ARBITRATORS CONCURRING

DATE SERVED: 1/30/91

  
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William R. Newsome

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