

Arbitration

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
One East Broward Boulevard
Suite 1000
Ft. Lauderdale, Florida 33301
(305) 522-7391

In the Matter of the Arbitration Between)

Name of Claimant(s))

Raymond M. and Johanna C. Monterosso)

Case No. 90-02107

Name of Respondent(s))

John Nace)

Heard before the members of the Arbitration Panel:

George Falos, Esq.
L. Matthew Byrd, Esq.
Sam Giunta

Public
Industry
Public

REPRESENTATION

Claimants, Raymond and Johanna Monterosso ("the Monterosso's"), were pro-se.

Respondent, John Nace ("Nace"), was represented by Michael Kahn of Kahn & Kahn, P.A.

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on July 31, 1990. Claimants alleged that Respondent: failed to inform them that a certain mutual fund was a PaineWebber in-house fund; failed to deliver a prospectus; erred in the application form of an annuity purchased by Claimants, which error caused Claimants to be subject to taxes, withdrawal fees and probate; executed on unauthorized purchase of stock; and churning.

Respondent filed a Statement of Answer with the NASD on October 22, 1990. Respondent, denied all allegations of wrongdoing and alleged that: Claimants could have retained counsel to investigate the effect of probate on the proposed annuity; Respondent never churned the account; and the stock purchase was authorized.

Respondent alleged affirmative defenses including that: Claimants were kept informed of all transactions; losses were due to market forces beyond Nace's control; failure to join an indispensable party; Nace made up for any losses incurred regarding the stock purchase; failure to state a cause of action; and, since Nace was not an attorney, he had no duty to the Monterosso's

regarding whether or not the annuity would be subject to probate.

RELIEF REQUESTED

Claimants requested damages in the amount of \$24,707.00 plus punitive damages in the amount of \$5,000.00.

Respondent requested dismissal of the claim.

AWARD

On June 14, 1991, in Tampa, Florida, during a hearing lasting two (2) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants; on July 25, 1990 and by Respondent on September 27, 1990.

1. 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:
2. Respondent is found liable and shall pay to the Claimants the amount of \$4,444.94.
3. Claimants' request for punitive damages is denied.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$800.00 (two sessions x \$400.00 per session). Respondent is hereby assessed \$800.00, \$400.00 of which shall be paid directly to the Claimants, and \$400.00 of which shall be paid to the National Association of Securities Dealers, Inc. Respondent is also assessed the \$120.00 non-refundable filing fee to be paid directly to Claimants as a return of their filing fee. The NASD shall retain the \$520.00 previously deposited by Claimants in partial satisfaction of such fees.

2. 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/
George Felos, Esq.

/s/
L. Matthew Byrd, Esq.

/s/
Sam Giunta

Date of Decision: August 9, 1991