

N.A.S.D. AWARD**NATIONAL ASSOCIATION OF SECURITIES DEALERS****National Association of
Securities Dealers, Inc.**
NASD Financial Center
33 Whitehall Street
New York, N.Y. 10004
FAX (212) 858-4389

In the Matter of the Arbitration Between**Name of Claimants**

Edmund and Louise Latif

vs.

Case #
90-02129**Name of Respondent**

Anthony J. Pontieri

REPRESENTATION

For Claimants: Dan Marchitello.

For Respondent: Pro se.

CASE INFORMATION

Statement of Claim filed: August 02, 1990.

Claimant's Submission Agreement signed on: July 25, 1990.

Statement of Answer filed by Respondent, Anthony J. Pontieri, on: November 20, 1990.

Respondent's Submission Agreement signed on: February 27, 1991.

CASE SUMMARY

Claimants alleged that in June, 1986 as they were nearing retirement they wanted to roll over \$14,500 of IRAs into low risk securities such as mutual fund or no risk government backed bonds. Claimants further alleged that they sought Respondent's, Anthony J. Pontieri, advice and that he churned their account and purchased high risk stocks which were marketed by his firm.

Claimants also alleged that Respondent misstated that Claimants' income was \$90,000 and that they had a net worth of \$340,000.00.

Respondent denies the allegations of churning and denies liability. Respondent contends that the information on the Claimants' application form were given to him by them. He alleges that the Claimants received monthly statements and that he discussed the transactions with them. Respondent further argues that the investments were consistent with Claimants' wishes. Claimants further allege that they entered into a settlement agreement with

Respondent and he made two payments totalling \$3,000.00 but later reneged on his agreement to pay a total of \$6,500.00.

RELIEF REQUESTED

Claimants request an award of \$3,500 plus \$1,200 for the cost of their airfare from Florida to New York for the previously scheduled hearing date.

Respondent requests that the claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

By letter dated January 07, 1992, Claimants requested that they testify by telephone based upon the fact that they are on fixed income and reside in Florida. In further support of their request, they argue that Respondent breached the parties' settlement agreement and advised them that he would not pay as agreed and that if an award was rendered against him, he would not pay because he had surrendered his broker's license. This arbitrator determined not to hear the testimony telephonically, but allowed the parties to submit sworn affidavits stating why they cannot attend the hearing. The parties were also allowed the opportunity to submit additional papers in support of the positions.

Respondent did not submit additional papers in his defense. On December 05, 1992, he advised the NASD that he was contemplating filing a bankruptcy petition. He further stated that while he had paid \$3,000.00 of the \$6,500.00, he cannot afford to pay any more. He also stated that the NASD should not send him any letter because he will not attend the hearing. He also refused to give his home address.

AWARD

After considering the pleadings, and additional submissions made by the Claimants, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Since the Settlement Agreement conditions the release of Respondent upon payment of \$6,500.00 to Claimants by October 03, 1991, and since it is undisputed that, to date, Respondent has paid only \$3,000.00, Claimants have the right to assert their full claim.

2. From the Claimants' letter of March, 1989, they assert a loss of \$11,000.00. Respondent's submission contains various defenses to the Claimants' claim. The Claimants have not responded to these defenses, which include ratification by the Claimants of the purchases Respondent made on their behalf. The Claimants have requested that this case be decided on

documents and have declined, for reasons of health, to travel to New York again. On this state of the record, the Claimants have met their burden of proof only as to the balance due under the Settlement Agreement of \$3,500.00.

3. The Claimants claim for their airplane fares must be denied, since these fares were incurred before the Settlement Agreement, and were presumably considered by both sides in agreeing to the settlement.

4. Accordingly, I award to the Claimants the sum of \$3,500.00, plus interest from July 03, 1991 at the rate of eight percent (8%) per annum to the date of the award, plus interest at the legal rate from the date of the award.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

1. The NASD has received and shall retain \$50.00 non-refundable filing fee from the Claimants;

2. The NASD has received and shall retain the \$75.00 hearing session deposit paid by the Claimants;

3. Respondent is assessed \$50.00 non-refundable filing fee and \$75.00 hearing session fee and shall satisfy this assessment by reimbursing Claimants \$125.00.

Arbitrator's Signature
Name

David N. Brainin
David N. Brainin, Esq.
Sole Public Arbitrator

Date of Decision: February 6, 1992

Dated by the NASD: March 2, 1992