

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

: In the Matter of the Arbitration Between :
: :
: Samuel Burtoff, as Trustee of the :
: Samuel Burtoff M.D., PC Pension Trust :
: Claimant : CASE# 90-03033
: vs. : AWARD
: :
: Dominick & Dominick, Incorporated :
: Respondent :

REPRESENTATION

For Claimant: Robert F. Condon, Esq. of the law firm of
McCarthy & Burke.

For Respondent: William J. Bethune, Esq. of the law firm of
Ross, Marsh, Foster, Myers & Quiggle.

CASE SUMMARY

On October 24, 1990, Claimant Samuel Burtoff, as Trustee of the Samuel Burtoff M.D., PC Pension Trust filed a claim against Respondent Dominick & Dominick Incorporated with the National Association of Securities Dealers, Inc. The Claimant alleged that the actual return of principal arising from a sale of GNMA bonds he owned paying 8% and 8.5% interest and the purchase of GNMA certificates paying 9.5% interest was substantially less than the initial calculation given to the Claimant by the Respondent. Claimant further alleged that Respondent admitted to the calculation error and agreed to make restitution which it has failed to do. On November 20, 1990, the Respondent filed an Answer and contended that it did not agree to pay the Claimant the difference between actual and calculated return of principal, and it did not guarantee that the sale of GNMA's would realize the return of principal that was initially calculated. The Respondent further contends that there was no reliance on the part of the Claimant to support recovery and depending on when the new investment is sold, there might not be any loss at all.

RELIEF REQUESTED

Claimant requested damages of \$20,307.39. Respondent requested dismissal of claim.

AWARD


On May 24, 1991 and June 28, 1991 the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant Samuel Burtoff, as Trustee of the Samuel Burtoff M.D., PC Pension Trust on October 24, 1990 and by Respondent Dominick & Dominick, Incorporated on November 20, 1990. The hearing was conducted at the offices of the National Association of Securities Dealers, Inc. located in Washington, DC and consisted of three (3) hearing sessions. The undersigned arbitrator, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. The Claimant's claim be and hereby is dismissed in all respects.
2. The parties shall each bear their respective costs, including attorneys' fees.

FORUM FEES

Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$400.00 hearing session deposit previously deposited by the Claimant and the Claimant shall pay to the National Association of Securities Dealers, Inc. the sum of \$100.00 to represent the claim filing fee outstanding. In addition, the Claimant be and hereby is liable and shall pay to the National Association of Securities Dealers, Inc. the sum of \$800.00 to represent forum fees.

CONCURRING ARBITRATOR'S SIGNATURE



Perry E. Wallace, Jr., Esq.

Public Arbitrator

Date of Decision: August 28, 1991
Dated by NASD: September 5, 1991