

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)

Name of Claimant(s))

Sara Yonis)

Name of Respondent(s))

Donaldson Lufkin & Jenrette Securities)
James Mestl)

Case No. 91-00609

Heard before the members of the Arbitration Panel:

Robert Harschmann, Esq.
Terrence W. Grant
James E. Morrison

Public
Industry
Public

REPRESENTATION

Claimant, Sara Yonis ("Yonis"), was represented by Michael R. Casey, Esq. of Casey & Molchan, P.A.

Respondents, Donaldson, Lufkin & Jenrette Securities Corp. ("DLJ") and James Mestl ("Mestl"), were represented by Thomas A. Franko, Esq. of DLJ.

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on February 26, 1991. Claimant alleged that she was a single, elderly retired person living from the income of her securities portfolio; that her investment objectives were income with moderate growth, preservation of capital and avoiding speculative risk; that she contacted Respondents to obtain portfolio management and opened an account with them; that Respondents made misrepresentations of and omitted to state material facts; made recommendations and effected trades in unsuitable equity securities; that Mestl lulled Claimant with misrepresentations about her account; and, that Respondents' actions constituted fraud, breach of fiduciary duty, improper supervision and, violation of Section 517.301, Florida Statutes.

Respondents filed a Statement of Answer with the NASD on April 9, 1991. Respondents denied all allegations of wrongdoing and alleged that Claimant managed her own account and made all of her investment decisions and that Respondents never agreed to manage her portfolio.

Respondents alleged the affirmative defenses of 40% commission discount; Claimant conducted research and Respondents merely made suggestions; Claimant made all hold decisions and timing decisions; Claimant placed limit orders;

and, when Claimant followed Respondents' suggestions, she added to holdings independently.

RELIEF REQUESTED

Claimant requested damages in the amount of \$100,000.00, interest, costs and attorney's fees.

Respondents requested dismissal and costs.

AWARD

On September 25 and 26 and October 23, 1991, in Fort Lauderdale, Florida, during hearings lasting six (6) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on February 18, 1991 by Respondent, Mestl, on April 8, 1991 and signed on April 18, 1991 by Thomas A. Franko, Esq. on behalf of Respondent, DLJ.

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned 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. Respondents, DLJ and Mestl, are found liable, jointly and severally, and shall pay to the Claimant the amount of \$7,445.00, plus interest at the legal rate of 12% per annum from December 31, 1990 to date, in the amount of \$746.00 for a total due to the Claimant of \$8,191.00.
3. Respondents are also found liable, jointly and severally, and shall pay to the Claimant the further amount of \$927.00 for costs.
4. Claimant's request for attorney's fees 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 \$3,000.00 (six sessions x \$500.00 per session). Respondents are hereby assessed \$3,000.00, jointly and severally, \$500.00 of which shall be paid directly to the Claimant, and \$2,500.00 of which shall be paid to the National Association of Securities Dealers, Inc.

2. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

Fees are payable to the National Association of Securities Dealers, Inc.

OTHER ISSUES

None.

Concurring Arbitrators' Signatures

/s/
Robert Herschmann, Esq.

/s/
Terrence W. Grant

/s/
James E. Morrison

Date of Decision: November 6, 1991