

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Kate L. Matchik

91-01420

Names of Respondents

New York Life Securities, Inc.
and Joel Shapiro

REPRESENTATION

Claimant, Kate L. Matchik was represented by Mark D. Chester, Esq. of Gallagher & Kennedy, Phoenix, Arizona.

Respondent, New York Life, Inc. was represented by Alan R. Taxerman, Esq. of New York Life, New York, New York.

Respondent, Joel Shapiro appeared pro se in this matter.

CASE INFORMATION

The Statement of Claim was filed with the National Association of Securities Dealers, Inc. ("NASD") on May 6, 1991.

Claimant, Kate L. Matchik's Submission Agreement was signed on March 15, 1991.

Respondent, New York Life, Inc.'s Submission Agreement was signed on August 19, 1991 by Robert W. Galler.

Respondent, Joel Shapiro's Submission Agreement was signed on August 22, 1991.

A Statement of Answer was filed with the NASD by Respondent, New York Life, Inc. on August 20, 1991.

A Statement of Answer was filed with the NASD by Respondent, Joel Shapiro on August 23, 1991.

HEARING INFORMATION

The hearing date was October 26, 1992 and the hearing lasted for three (3) sessions.

The hearing location was Scottsdale, Arizona.

CASE SUMMARY

Claimant, Kate L. Metchik, ("Metchik") alleged that Respondent New York Life, Inc. ("NYL"), and Respondent Joel Shapiro ("Shapiro") while employed as a NYL representative, breached their fiduciary duties, engaged in actual and constructive fraud and invested Metchik's funds in unsuitable investments. These allegations arise out of Metchik's investment in MacKay-Shields Mainstay Funds. ("MacKay-Shields")

Metchik alleged that Shapiro induced her to purchase Mac-Kay Shields by representing that the safety of her principal was guaranteed, that she would receive a high monthly income and that the investment was subject to little or no risk. According to Metchik, Shapiro inaccurately stated her net worth to be \$300,000 in cash and an additional \$50,000 in assets on her application for the MacKay-Shields Fund, in order to insure that she would be approved for the junk bond investment. In addition, Metchik asserted that Shapiro failed to inform her of the investment's contingent deferred sales charge and failed to provide her with a prospectus or any literature either prior to or at the time of the sale.

Metchik contended that her investment diminished by \$43,448.48 in less than fifteen months and that she was assessed \$7,251.52 in unauthorized commissions. Metchik also alleged that NYL, in addition to its direct liability caused by its own acts and omissions is individually, imputedly, derivatively and vicariously liable for the various acts and omissions of Shapiro. Lastly, Metchik maintained that Respondents also engaged in breach of contract, negligent misrepresentation, securities fraud and violated Arizona Revised Statutes Annotated Sections 13-2301 and 13-2314(A).

In its Statement of Answer, NYL denied all of the allegations contained in the Statement of Claim. NYL alleged that Metchik was a well-informed investor who authorized and subsequently ratified her \$220,000 investment in MacKay-Shields. In addition, NYL asserted that Metchik's expressed investment objective matched the Fund's investment objective and upon signing the application for the Fund, Metchik acknowledged that she understood the objectives, risks and expenses associated with the Fund. NYL further alleged that Shapiro explicitly told Metchik that there was a deferred sales charge connected with the Fund. Also, NYL asserted that the decline in value of the Fund was prevalent through the industry for high yield corporate bonds, and was not due in any way to the operation of the MacKay-Shields Fund.

NYL contended that Metchik ratified the purchase as she received monthly statements from the Fund, detailing the performance of her shares. Lastly, NYL specifically denied the claims of failure to supervise Shapiro and it asserted that it acted in conformity with the high ethical standards with which it has always operated.

In his separate Statement of Answer, Shapiro denied all of the allegations contained in the Statement of Claim. Specifically, Shapiro denied ever telling Matchik that the safety of her principal was guaranteed. Shapiro also stated that from his discussions with Matchik regarding her assets, he understood that she had \$300,000 to invest. Shapiro also asserted that he did inform Matchik about the deferred sales charge and the \$7,251.52 is the amount of the deferred sales charge, not unauthorized commissions. In addition, Shapiro alleged that Matchik's calculation of her loss is inaccurate in that in December of 1988 a dividend of \$5,015 was paid by the Fund. Lastly, Shapiro denied making any false representations, misrepresentations or omissions or untrue statements.

RELIEF REQUESTED

Matchik, requested \$50,700.00 in compensatory damages, pre-judgment and post-judgment interest, costs and attorney's fees, punitive damages in an amount the panel deemed just and proper and treble damages.

NYL requested that the Statement of Claim be dismissed in its entirety and that all costs and attorneys' fees incident to this proceeding be assessed against the Claimant.

Shapiro requested that the Statement of Claim be dismissed in its entirety and all costs and attorneys' fees incurred by him be assessed against the Claimant.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may 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.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and the post-hearing briefs of the parties, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, NYL and Shapiro are jointly and severally liable for and shall pay to Matchik the sum of Eighteen Thousand Eighty Three Dollars and No Cents (\$18,083.00);
2. Matchik's claim for punitive and treble damages is specifically denied and dismissed in its entirety; and,
3. The parties shall each bear their respective costs, expenses and attorney's fees incurred in this matter.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the \$150.00 non-refundable claim filing fee and the \$500.00 hearing session deposit previously deposited with the NASD by Matchik. Respondent, Shapiro is assessed and shall pay additional Forum Fees to the NASD in the amount of \$500.00. Respondent, NYL is assessed and shall pay additional Forum Fees to the NASD in the amount of \$500.00. Forum Fees were calculated at the rate of \$500.00 per hearing session for three (3) hearing sessions.

In addition, the panel has determined that the NASD shall retain the postponement fee previously deposited by Respondent, NYL.

Additional Forum Fees assessed to the parties are payable to the NASD.

Panel Members Concurring:

/S/ Irving Lowe
Irving Lowe, Esq.
Public Arbitrator
Chairperson

December 1, 1992
Dated

/S/ Robert A. Williams
Robert A. Williams, Jr.
Panelist
Public Arbitrator

November 29, 1992
Dated

/S/ Leon G. Mackey
Leon G. Mackey
Panelist
Industry Arbitrator

November 30, 1992
Dated

Date Award Served by the NASD: December 24, 1992