

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :

Thomas & Ruby Kerns :

Claimants :

CASE #91-01498

vs. :

AWARD

Wheat First Securities, Inc. :

Gary Wortman :

Respondents :

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on May 14, 1991, Claimants, Thomas & Ruby Kerns who appeared Pro Se, alleged that Respondents Wheat First Securities, Inc. and Gary Wortman recommended the purchase of "MFS" Mass Financial High Income Trust Fund and misrepresented relevant facts about the investment. Claimants further alleged that Respondents misled them into the purchase and later inappropriately advised them to hold the investment. Claimants contended that Respondent, Gary Wortman did not have their best interest in mind but was only interested in collecting his commissions. Claimants further contended that Respondent, Gary Wortman misrepresented the value of the investment by providing them with false information. Claimants argued that Respondents, Wheat First Securities and Gary Wortman mishandled their account relative to their investment objectives and this inappropriate handling caused them to incur losses.

Respondents, Wheat First Securities, Inc. and Gary Wortman by and through their in-house counsel, John M. Ivan, Esq., maintained that Claimants, Thomas & Ruby Kerns invested \$15,000.00 in "MFS" Mass Financial High Income Trust Fund and that a larger percentage of their account remained invested in Ryland bonds and money market funds. Respondents further maintained that they provided Claimants with a copy of the prospectus and all relevant information about the "MFS" investment. Respondents contended that Respondent, Gary Wortman's advice to hold the investment was totally reasonable since the fund was a long-term investment. Respondents further contended, that Respondent, Gary Wortman received his regular commission on the purchase and would only have benefited if Claimants had sold and reinvested in a product generating revenue. Respondents argued that Claimants were informed of the mistaken

valuation and continued to hold the investment even after being advised of the corrected valuation. Respondents further argued that "MFS" was a suitable recommendation as it represented only an appropriate component of their portfolio as a whole and that Claimants had full knowledge of the risks and potential losses.

RELIEF REQUESTED

Claimants, Thomas & Ruby Kerns requested \$6,214.00 in actual damages plus interest.

Respondents, Wheat First Securities, Inc. and Gary Wortman requested the claim be dismissed.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Helen E. Clawson, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on May 6, 1991 and by the Respondent, Wheat First Securities, Inc. on June 28, 1991 and by Respondent, Gary Wortman on June 27, 1991.


And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of Claimants, Thomas & Ruby Kerns against Respondents, Wheat First Securities, Inc. and Gary Wortman are dismissed.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc. Respondents, Wheat First Securities, Inc. and Gary Wortman shall pay \$75.00 to the Claimants as partial reimbursement.

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AFFIRMATION

I, HELEN E. CLAWSON, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: February 24, 1992