

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

Antoinette & Andrew DeMarsico

vs.

Case #
91-02326Name of RespondentsUSLIFE Equity Sales Corp.
William A. LevineREPRESENTATION

For Claimants: Antoinette DeMarsico.

For Respondent, U.S. Life Equity Sales Corp.: Paul A. Immerman, Esq.

For Respondent, William A. Levine: Barry J. Mandel, Esq. of Baer Marks & Upham.

CASE INFORMATION

Statement of Claim filed: July 29, 1991.

Claimants, Antoinette and Andrew DeMarsico's, ("Claimants") Submission Agreement signed on: July 25, 1991.

Statement of Answer filed by Respondent, U.S. Life Equity Sales Corp., ("Respondent U.S. Life") on: September 13, 1991.

Respondent, U.S. Equity Life Sales Corp.'s, Submission Agreement signed on: September 13, 1991.

Statement of Answer filed by Respondent, William A. Levine, ("Respondent Levine") on: October 2, 1991

Respondent, William A. Levine's, Submission Agreement signed on: October 7, 1991.

HEARING INFORMATION

Hearing Date/Sessions: March 9, 1992 - Two Sessions.

Hearing Location: New York City, New York.

CASE SUMMARY

Claimants alleged that they contacted Respondent Levine for investment advice regarding Claimant, Andrew DeMarsico's, early retirement. Claimants alleged that they told Respondent Levine they wanted to supplement their income until they were eligible to receive social security benefits. Claimants alleged that on the advice of Respondent Levine they invested \$35,000 in the Franklin Age High Income Fund ("the Fund") since Mr. Levine had told them that this would give Claimants \$325 a month. Claimants also agreed to invest \$13,557.43 of Andrew DeMarsico's IRA in the same fund. Claimants alleged they stressed to Respondent Levine their concerns for risk and were assured by Mr. Levine that he would be conservative with Claimants' investments.

Claimants further alleged the fund dropped when the stock market crashed prompting them to inquire with Respondent Levine who told them that the Fund was well managed and would turn around. Claimants alleged that they inquired further at other sources and were advised that the fund consisted of junk bonds. Claimants alleged that they then contacted Respondent Levine who advised Claimants that the Fund was cutting dividends and that because the Saudi Arabian crisis was creating uncertainty in the market, he could no longer advise Claimants.

Claimants alleged that Mr. Levine then advised them to sell the fund which they did. Respondent Levine transferred the balance of the fund, \$20,348.38, to Claimants Money Market account and the balance of Claimants IRA of \$11,660.38 into U.S. Adj. Government Securities Fund.

Respondent U.S. Life maintained that Claimants' purchase of the Franklin AGE High Income Fund was effected through Integrated Resources Equity Corp., that U.S. Life did not receive a commission, that they had no connection with the purchase and therefore, are not liable with respect to Claimants' purchase. Respondent U.S. Life maintained that Respondent Levine was not affiliated with them at the time of the Claimants' purchase but was affiliated with Integrated Resources Equity Corp. and that they are not liable for Respondent Levine's actions at another firm.

Respondent U.S. Life maintained that after Claimant filed a complaint with the NASD, the NASD concluded that no action was warranted against Respondents.

Respondent Levine maintained that when the Claimants approached him they expressed their desire for high income from their investment. Respondent stated that he recommended the Fund and gave the Claimants a copy of the Prospectus. Respondent Levine maintained the Claimants read and agreed to the terms of the Prospectus and were fully aware of the risks involved. Respondent maintained that he advised to the Claimants to place the dividends from the fund into their Franklin Money Fund. Respondent maintained that Claimants invested \$30,000 and \$5,000 in the Fund. Respondent Levine maintained that when Claimants inquired whether the fund

consisted of junk bonds, he confirmed that it did contain high yield instruments, as disclosed in the prospectus. Respondent Levine maintains that the Claimants removed him as broker but did not at that time request that the Fund be sold. Respondent Levine maintained that he was reinstated some time later and was asked by the Claimants to sell the Fund after his explanations regarding the uncertainties in the market created by the invasion of Kuwait.

Respondent Levine maintained that during the time that the Claimants owned the Fund, all dividends and interest were paid into the Franklin Money Fund and that over time this earned \$16,501. While Claimants' investment in the Fund dropped to \$20,348.88, Respondent Levine maintained that their original investment had risen to \$36,849.38. Respondent Levine maintained that the Claimants also invested certain IRA monies into the Fund and that the total loss on this investment was \$380.84.

Respondent Levine maintained that after Claimant filed a complaint with the NASD, the NASD concluded that no action was warranted against Respondents.

RELIEF REQUESTED

Claimants request an award of \$16,548.67 plus interest and fees.

Respondents request that the claim be dismissed in its entirety.

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 original remains on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondents U.S. Life Equity Sales Corp. and William A. Levine are jointly and severally liable to the Claimants and shall pay to the Claimants the sum of FIVE THOUSAND SIX HUNDRED SEVENTY THREE AND 00/100 DOLLARS (\$5,673.00);
2. The claim for interest is denied;
3. All parties shall bear their respective costs including attorney's fees.

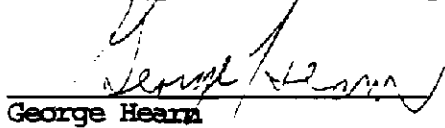
FORUM FEES

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

1. Claimants are assessed the \$100.00 non-refundable filing fee and \$400.00 for one hearing session. Claimants shall receive a credit of \$500.00 which was previously paid;
2. Respondents, U.S. Life Equity Sales Corp., and William A. Levine are jointly and severally assessed the balance of the forum fees, \$400.00, and are hereby directed to pay the sum of \$400.00 to the NASD.

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

Concurring Arbitrator's Signature


George Hearn

Public

Date of Decision April 14, 1992

FORUM FEES

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

1. Claimants are assessed the \$100.00 non-refundable filing fee and \$400.00 for one hearing session. Claimants shall receive a credit of \$500.00 which was previously paid;
2. Respondents, U.S. Life Equity Sales Corp., and William A. Levine are jointly and severally assessed the balance of the forum fees, \$400.00, and are hereby directed to pay the sum of \$400.00 to the NASD.

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

Concurring Arbitrator's Signature



Robert Seaman, Esq.

Public Chairperson

Date of Decision April 14, 1992

FORUM FEES

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

1. Claimants are assessed the \$100.00 non-refundable filing fee and \$400.00 for one hearing session. Claimants shall receive a credit of \$500.00 which was previously paid;
2. Respondents, U.S. Life Equity Sales Corp., and William A. Levine are jointly and severally assessed the balance of the forum fees, \$400.00, and are hereby directed to pay the sum of \$400.00 to the NASD.

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

Concurring Arbitrator's Signature

William E. O'Mara
William E. O'Mara

Industry

Executed on

~~Date of Decision~~ 4/10/1992

Date of Decision: April 14, 1992