

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Ann Kennedy Foster

NASD Arbitration
No.91-02682

Name of Respondent(s)

Sutro & Co., Inc.

REPRESENTATION

For Claimant: Jeffrey M. Jones, Esq., Law Office of Archibald M. Mull,
Sacramento, California

For Respondent: Daniel D. McMillan, Esq., Jones, Day, Reavis & Pogue, Los
Angeles, California

CASE INFORMATION

Statement of Claim filed: August 29, 1991

Claimant's Submission Agreement signed: August 21, 1991

Statement of Answer filed: November 22, 1991

Respondent's Submission Agreement signed: October 31, 1991

Amended Statement of Claim filed: April 9, 1992

HEARING INFORMATION

Motions Hearing Date / Sessions: February 2, 1993 - 2 Sessions

Hearing Dates / Sessions: March 22, 1993 - 2 Sessions
March 23, 1993 - 2 Sessions

Hearing Location: San Francisco, California

CASE SUMMARY

Claimant alleged breach of fiduciary duty, fraud, misrepresentation, omission of material facts, emotional distress, and violation of 18 U.S.C. 1961, et. seq. (Racketeering Influenced & Corrupt Organizations Act) in connection with her investment in the VMS Mortgage Investment Fund.

Respondent denied all allegations of wrong-doing, and asserted that Claimant was fully informed of all particulars of the VMS Fund prior to investment. Respondent further asserted that, based on the information then available, the investment was suitable for Claimant and that any losses alleged by Claimant are the result of market conditions, not Respondent's conduct.

RELIEF REQUESTED

Claimant requested rescission of the investment and compensatory damages of approximately \$21,214.75 including interest at 10%, punitive damages of \$21,214.75, emotional distress damages, treble damages under the RICO statute, and attorney's fees and costs.

Respondent requested dismissal of all claims.

OTHER ISSUES CONSIDERED & DECIDED

This matter was originally filed in the Sacramento County, California Superior Court, Case No. 519808, and was compelled to arbitration before the National Association of Securities Dealers by Order of the Court, Judge Joe. S. Gray, on July 25, 1991.

On February 2, 1992, the undersigned arbitrators convened a hearing on motions. Respondent's Motion to Strike Punitive Damages and RICO claims was denied by the panel.

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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. All claims for rescission, compensatory damages, emotional distress damages, punitive damages and RICO damages are dismissed in their entirety.
2. The parties shall each 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 against Claimant:

1 session (Motions) @ \$500/session	=	\$ 500.00
4 sessions (evidentiary) @ \$500/session	=	\$2,000.00
<u>Credit for hearing session deposit</u>	=	<u>\$ (500.00)</u>
Balance Due		\$2,000.00

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

ARBITRATORS

<u>Name</u>	<u>Public/Industry</u>
John. P. Sparrow	Public Chairperson
Kathryn J. Toronto	Public Panelist
Lawrence N. Kummer	Industry Panelist

Concurring Arbitrators' Signatures

John P. Sparrow

Kathryn J. Toronto
Kathryn J. Toronto

Lawrence Kummer

DATE SERVED: 04/07/93

Date of Decision: 3/23/93