

PUBLIC

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.,

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In the Matter of the Arbitration Between :

Michael A. and Patricia A. McKimmy :

Claimants :

vs. :

Roy Buckingham and Mike Cowdrey :

Respondents :  
-----:

CASE #91-02795  
AWARD

CASE SUMMARY

In the claim filed with the National Association of Securities Dealers, Inc. on September 9, 1991, Claimants, Michael A. and Patricia A. McKimmy who appeared Pro Se, alleged that in February 1990 Respondent Mike Cowdrey, Financial Consultant with Shearson Lehman Brothers heavily solicited them to purchase shares of Graphic Scanning Corp., ("Graphic") whereby they would redeem part of the positions they were holding in the Shearson Growth and Opportunity Fund ("the Fund") to pay for this purchase, by misrepresenting Graphic's future value and promising low percentage commission fees. Claimants further alleged that when they received the confirmations for the trades they realized that Respondent, Mike Cowdrey had misled them regarding the amount of commissions and fees, at which time, on March 1, 1990, Claimants sent the redemption and purchase confirmations back to Respondent, Roy Buckingham, Branch Manager, cancelling the trades, in addition to ordering their money returned to the original positions. Claimants contended that after no action was taken or alternative solution provided by Respondents, they wrote a letter to the Chairman of Shearson Lehman Brothers, at which time, Claimants were advised that Respondent, Roy Buckingham would take care of it and as of this date their positions have not been returned. Claimants further contended that Respondent, Mike Cowdrey inappropriately handled their account with his hard sell tactics and lies about commissions, and Respondent Roy Buckingham's failure to supervise Respondent, Mike Cowdrey, caused Claimant's to sustain losses.

Claimants asserted a Motion to Preclude Respondents' Statement of Answer since they did not meet the limit for the submission of their Statement of Answer required by Section 13(d)

of the NASD Code of Arbitration Procedure. Claimants further asserted that even though Respondents received a two week extension in which to file their Answer, they failed to submit a timely response, therefore, Respondents' Statement of Answer should be rejected.

Respondents Roy Buckingham and Mike Cowdrey by and through their in-house counsel Ann Parry, Shearson Lehman Brothers, Inc. maintained that in or about February 1990, account executive Respondant, Mike Cowdrey telephoned Claimants in order to discuss the purchase of Graphic Scanning Corp. stock and Claimants agreed it was a suitable investment, at which time, Claimants and Respondents, Mike Cowdrey further agreed that, in order to finance the purchase of Graphic, Claimants would redeem part of the positions they were holding in Shearson Growth and Opportunity Fund. Respondents further maintained that during this conversation, Claimants inquired as to the commission fees associated with these trades and Respondent, Mike Cowdrey informed them that he was unable to quote any specific number but that the charges were standard. Respondents contended that on February 23, 1990, pursuant to the specific and authorized instructions of Claimants, Respondent, Mike Cowdrey redeemed shares of the Fund from their accounts and purchased the shares of Graphic with the total commissions and redemption fees associated with the trades being an aggregate rate of commissions of approximately 3.19% to 3.38%. Respondents further contended that upon receipt of the trade confirmation, Claimants contacted Respondent, Mike Cowdrey to express their displeasure with the amount of commission that had been charged in association with the trades, at which time, Respondent, Mike Cowdrey explained that the commissions were fixed and if Claimants were unhappy with the trades he would reverse or bust them to their original positions. Respondents asserted that Claimants declined the offer and represented to Respondent, Mike Cowdrey that it was not the trades that upset them but that they were simply looking for a reduced rate of commission, at which time, Respondent, Mike Cowdrey again explained to Claimants that the fees associate with the transactions were not in his control and they would have to speak to Respondent, Roy Buckingham, the branch office manager. Respondents further asserted that Respondent Roy Buckingham explained to Claimants that as stated by Respondent Mike Cowdrey, the commissions would stand. Respondents argued that Claimant never indicated to Respondents that they intended or desired to reverse the transactions at issue, and Claimants, to date, continue to maintain their accounts with Shearson Lehman Brothers with positions in Graphic Scanning Corp.

**RELIEF REQUESTED**

Claimants, Michael A. and Patricia A. McKimmy requested \$1,621.00 in actual damages plus \$500.00 in Punitive damages.

Respondents, Roy Buckingham and Mike Cowdrey requested the claim be dismissed in its entirety with prejudice.

**AWARD**

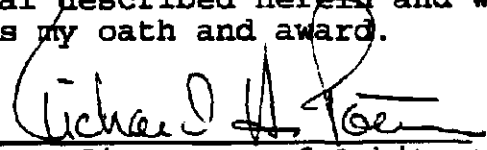
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Richard H. Potter, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on September 3, 1991, by the Respondent Roy Buckingham on March 30, 1992 and by the Respondent, Mike Cowdrey on March 30, 1992.

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. Respondents, Roy Buckingham and Mike Cowdrey are jointly and severally liable and shall pay to the Claimants, Michael A. and Patricia A. McKimmy the sum of \$109.00 in damages.
2. The Claimants request for punitive damages is denied.
3. The parties shall bear their respective costs.
4. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants Michael A. and Patricia A. McKimmy shall be retained by the NASD, Inc. Respondents, Roy Buckingham and Mike Cowdrey are jointly and severally liable and shall pay to the Claimants the sum of \$50.00 as reimbursement.

**AFFIRMATION**

I, Richard H. Potter, do here by 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: August 11, 1992