

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Matt and Frances Morelli

91-02939

Name of Respondent(s)

Darnall, Kemna & Co., Inc.
Marc D. Kemna
Anthony S. Vaughan

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on September 20, 1991, Claimants Matt and Frances Morelli, who appeared Pro Se, alleged that Respondent Darnall, Kemna & Co., Inc., through its representatives, Respondents Marc D. Kemna and Anthony S. Vaughan made misrepresentations to them regarding Massachusetts Financial Service (MFS), and that there would be no loss of principal if they moved their prior investment into this fund. The Claimants further alleged that Respondents Marc D. Kemna and Anthony S. Vaughan churned their account in order to generate commissions and that they should be compensated for their loss.

Respondent Darnall, Kemna & Co., Inc. failed to file an Answer to the Statement of Claim.

Respondent Anthony S. Vaughan, who appeared Pro Se, maintained that he never told the Claimants that their principal was guaranteed, nor that it would not fluctuate. Respondent Anthony S. Vaughan further maintained that no churning took place in this account, since his only transactions with them were to sell their prior investment, Franklin Fund, and to purchase the MFS Lifetime Government Income Plus Trust Fund, pursuant to the Claimants' instructions. The Respondent Anthony S. Vaughan contended that his intentions regarding the Claimants were to assist them in moving from a mutual fund which was performing poorly into another, which if it had been held long term, probably would have given them a better return.

Respondent Marc D. Kemna, who also appeared Pro Se, maintained that no churning occurred in the Claimants' account, since only two transactions took place, both approved by the Claimants. Respondent Marc D. Kemna further maintained that the Claimants were informed that the securities held by the Fund, not the Fund share price, are guaranteed as to the payment of the principal and interest and that the Fund yield and share price fluctuate. Respondent Marc D. Kemna contended that the Claimants sold the MFS fund without his or Mr. Vaughan's knowledge or advice, and that had they held onto the investment, they would have realized a profit.

RELIEF REQUESTED

Claimants Matt W. and Frances C. Morelli requested \$5,875.55 in actual damages.

Respondent Darnall, Kemna & Co., Inc. failed to file an Answer to the Statement of Claim.

Respondent Marc D. Kemna requested the claims of the Claimants be dismissed.

Respondent Anthony S. Vaughan requested the claims of the Claimants be dismissed.

OTHER ISSUES

1. In accordance with Section 13 of the NASD Code of Arbitration Procedure the Respondent Darnall, Kemna & Co., Inc. was served by certified and regular mail and given an opportunity to respond, which it failed to do.
2. Pursuant to the By-Laws of the NASD the arbitrator determined that Respondent Darnall, Kemna & Co., Inc. had notice of the claim and was required to submit to this arbitration proceeding and is, therefore, bound by the arbitrator's ruling and determination.

AWARD

Pursuant to Section 13 of the National Association of Securities, Inc. Code of Arbitration Procedure, a single Public Arbitrator, W. Reece Bader, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on September 7, 1991, by the Respondent Anthony Vaughan on June 5, 1992, by the Respondent Marc D. Kemna on June 1, 1992. Respondent Darnall, Kemna & Co., Inc. did


not sign a Submissions Agreement as required by Sections 12 & 13 of the NASD Code of Arbitration Procedure.

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 Darnall, Kemna & Co., Inc., Marc D. Kemna and Anthony S. Vaughan are jointly and severally liable and shall pay to Claimants Matt W. and Frances C. Morelli \$2,799.50 in actual damages.
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.

AFFIRMATION

I, **W. REECE BADER**, 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: December 9, 1992