

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

 In the Matter of the Arbitration Between :

Lynn A. Pestle, DDS, MS Money Purchase
 Pension Plan :

Claimant :

vs. :

Linsco/Private Ledger Corp.
 Richard Ford :

Respondents :

CASE #91-03796
 AWARD

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on December 3, 1991, Claimant, Lynn A. Pestle, DDS, MS, Money Purchase Pension Plan, who appeared Pro Se, stated that he held two accounts; a personal account and a corporate or pension money account with Respondent, Linsco/Private Ledger Corp. and alleged that Respondent, Richard Ford, a registered representative, handled these accounts for several years during which time purchases were made in conservative investments only. Claimant further alleged that Respondent, Richard Ford advised him to purchase some Lilly Warrants in small amounts for short periods of time and advised him that these investments were "safe". Claimant contended he was advised by his accountant that his funds were being commingled and that funds from his pension account were being used for short positions. Claimant further contended he started to receive "urgent" letters from several companies such as Bank One, informing him to "cover" the short positions immediately. Claimant asserted that when he contacted Respondents about these letters, Respondent Richard Ford assured him they were only a formality and he would take care of it. Claimant further asserted that he advised Respondents they were not authorized to take short positions in his pension money account and repeatedly requested they correct it, in addition, he informed Respondents that the short position in Bank One stock was contrary to his conservative investment objectives. Claimant further alleged that Respondent Richard Ford never informed him of the interest charged on the short position and failed to correct the Bank One position as requested. Claimant further contended that when Respondents failed to correct the Bank One position, he immediately transferred his accounts to another broker and was able to close this short position, thus resulting in a loss.

Respondents, Linsco/Private Ledger Corp. and Richard Ford by and through their in-house counsel Stephanie L. Brown, Esq., maintained that Claimant, Lynn A. Pestle, held a corporate account with Respondent, Linsco/Private Ledger Corp. and that Respondent Richard Ford was the registered representative handling the account. Respondents further maintained that they purchased a short sale of 600 shares of BANC One stock on November 9, 1990 on behalf of Claimant in this corporate account. Respondents contended that Claimant's account did not have discretionary trading and deny this transaction was unauthorized or contrary to Claimant's investment objectives. Respondents further contended that each and every transaction was discussed with Claimant and specifically authorized by him. Respondents asserted that confirmations of each transaction were mailed directly to the Claimant and that at the time of the BANC One transaction, Claimant did not have a pension account with Respondent, Linsco/Private Ledger Corp. Respondents further asserted that on or about November 21, 1991, Claimant's accountant notified them that Claimant had commingled corporate assets with pension plan assets and directed the account be split into two separate accounts, putting the BANC One short position into a Profit Sharing account. Respondents further contended that on December 7, 1990 Claimant opened two new accounts and directed the assets in his existing account be split between the new Corporate account and the new Profit Sharing account, in addition to, advising Respondents to put the BANC One short position into the Profit Sharing account. Respondents further maintained that Respondent Richard Ford informed Claimant of the interest charged on short positions and Claimant acknowledged this when he signed the margin agreement for his account. Respondents, Linsco/Private Ledger Corp. and Richard Ford argued that Claimant, Lynn A. Pestle engaged in the transaction at issue with full knowledge of the risks and at any time could have covered the BANC One position with little or no loss.

RELIEF REQUESTED

Claimant, Lynn A. Pestle requested \$10,000.00 in actual damages.

Respondents, Linsco/Private Ledger Corp. and Richard Ford requested the claim be denied in its entirety and they be awarded attorney's fees plus all costs be assessed against the Claimant.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single

Public Arbitrator, Mark E. Maddox, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on October 22, 1991, by the Respondent, Linsco/Private Ledger Corp. on January 20, 1992 and by Respondent, Richard Fox on February 10, 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, Linsco/Private Ledger Corp. and Richard Ford are jointly and severally liable and shall pay to the Claimant, Lynn A. Pestle the sum of \$8,925.00 in damages.
2. The parties shall bear their respective costs including attorney's fees.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant, Lynn A. Pestle shall be retained by the NASD, Inc. Respondents, Linsco/Private Ledger Corp. and Richard Ford are jointly and severally liable and shall pay to the Claimant, Lynn A. Pestle, the sum of \$150.00 as reimbursement.

AFFIRMATION

I, **MARK E. MADDOX**, 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: April 20, 1992