

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Phyllis Jean O'Reilly

and

92-00074

Name of Respondents

The Mutual Life Insurance Company of New York
MONY Securities Corporation.
The Sharp Financial Group, Inc..
The Sharp Consulting Group, Inc. and
Roger L. Sharp

REPRESENTATION OF PARTIES

Claimant Phyllis Jean O'Reilly appeared pro se.

Respondents The Mutual Life Insurance Company of New York ,MONY Securities Corporation, The Sharp Financial Group, Inc., The Sharp Consulting Group, Inc. and Roger L. Sharp were represented by Robin L. Harrison, Esq. of Brown Campbell Harrison & Wright, Houston, Texas.

CASE INFORMATION

The Statement of Claim was filed on or about January 8, 1992. Submission Agreement of Claimant Phyllis Jean O'Reilly was signed on December 16, 1991.

Statement of Answer was filed by Respondents The Mutual Life Insurance Company of New York, MONY Securities Corporation, The Sharp Financial Group, Inc., The Sharp Consulting Group, Inc. and Roger L. Sharp on or about March 18, 1992. Submission Agreement of Respondent The Mutual Life Insurance Company of New York was signed on April 21, 1992 by Robert F. Colby. Submission Agreement of Respondent MONY Securities Corporation was signed on April 21, 1992 by Gerald J. Carroll, Jr. Submission Agreement of Respondents The Sharp Financial Group, Inc. and The Sharp Consulting Group, Inc. were signed on April 6, 1992 by Roger L. Sharp. Submission Agreement of Respondent Roger L. Sharp was signed on April 6, 1992.

HEARING INFORMATION

The hearing was held on Thursday, February 18, 1993 in Dallas, Texas for a total of three (3) sessions.

CASE SUMMARY

Claimant alleged that Respondents The Mutual Life Insurance Company of New York, MONY Securities Corporation, The Sharp Financial Group, Inc., The Sharp Consulting Group, Inc. and Roger L. Sharp ("Respondents") engaged in fraudulent and deceitful practices. Claimant's specific allegations include but are not limited to: that Respondents directed her to sell recently acquired by inheritance "blue Chip" stocks creating a tax liability; made unsuitable investments; misrepresenting material facts; and directing and effecting mutual fund sales for the benefit of the broker's interests over those of the Claimant.

Respondents stated that the sale of the Claimant's stock was recommended to diversify the claimant's portfolio and to reduce the risk of the claimant's stock investments and to achieve the stated objectives of growth and income in a lower risk portfolio. Respondents also stated that the tax consequences were fully discussed with the Claimant and the transactions were made with her consent. With respect to the allegation of unsuitability, the respondents stated the investments made were consistent with the stated investment objectives of the Claimant and designed to decrease risk, preserve the principal amount of investments and to fund the life insurance premiums. Respondents denied the allegations regarding making material misrepresentations or omitting to state material facts. Respondents further stated that the transactions made were at the request and direction of the Claimant contrary to the financial plan devised by Respondent Sharp. Respondents also asserted the following affirmative defenses: ratification, waiver and the claims should be barred by the claimant's own malfeasance.

RELIEF REQUESTED

Claimant requested an award in the amount of \$153,178.27 and punitive damages in the amount of \$225,000.00.

Respondents requested that the claims asserted against them be dismissed in their 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(s) 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. No damages are awarded herein. Arbitrator Marc A. Myrin agrees that the Claimant should take nothing against Mutual Life Insurance Company of New York or MONY Securities Corp. However, Arbitrator Myrin thinks that Claimant has proven that the investments recommended by Respondent Roger L. Sharp, The Sharp Group, Inc. and the Sharp Financial Group, Inc. (collectively "Sharp") were unsuitable for Claimant. No damages should be awarded to Claimant because of lack of evidence presented against actions taken or which were not taken by Respondent Sharp in connection with the Claimants investments in the International High Yield Bond and Precious Metal funds.
2. Each party shall bear its own costs, expenses and attorney's fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$200.00 and shall retain as forum fees the hearing session deposit in the amount of \$750.00 previously deposited with the NASD by the Claimant. Claimant shall pay to the N.A.S.d. the additional sum of \$375.00 and Respondents shall be and hereby are jointly and severally liable for the sum of \$1,125.00 as forum fees.

Forum fees are calculated at the rate of \$750.00 per hearing session and \$300.00 for each prehearing conference, if any.

The NASD shall retain postponement fees in the amount of \$750.00 previously deposited with the NASD by the Respondents Mutual Life Insurance Company of New York or MONY Securities Corp.

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Award

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

Dated:

s/ Jerry C. Gilmore, Esq.

Jerry C. Gilmore, Esq.

Public Arbitrator, Presiding Chair

March 8, 1993

s/ Marc A. Myrin, Esq.

Marc A. Myrin, Esq.

Public Arbitrator

March 8, 1993

s/ Stephen Denning

Stephen Denning

Industry Arbitrator

March 6, 1993