

PUBLIC

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :
Melvin Williams :
Claimant : CASE #92-00330
vs. : AWARD
Waddell & Reed Financial Services :
Respondent :

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 29, 1992, Claimant, Melvin Williams who appeared Pro Se, alleged that in September 1989 when he received a lump sum annuity payment from his retirement plan, Respondent, Waddell & Reed, Inc. by and through their broker, Jessie T. Marshall, advised him that these funds could be rolled over into a tax deferred investment. Claimant further alleged that on November 14, 1989, at the advice of Mr. Marshall, he invested \$15,000.00 with REspondent because of the tax deferred treatment. Claimant contended that when he filed his 1989 Income Tax Return, he was informed by the I.R.S. that these funds could not be tax deferred and subsequently, he had to pay taxes on this \$15,000.00 investment. Claimant further contended that he would not have invested these funds if it was not for Respondent's broker, Mr. Marshall, incorrect information about the tax deferment, therefore, he should be reimbursed for the 7.5% commission paid on this investment.

Respondent, Waddell & Reed, Inc. by and through their in-house counsel David R. Burford, Esq., maintained that in 1989 when Claimant, Melvin Williams received a lump sum distribution upon his retirement, he contacted Mr. Jessie Marshall, a Waddell & Reed, Inc. representative, to discuss investing the money. Respondent further maintained that in November 1989 Claimant invested \$15,000.00, which was a portion of his lump sum, in a mutual fund recommended by Mr. Marshall, at which time, Claimant never indicated that his investment was conditional on tax-deferred treatment and Mr. Marshall's recommendation was strictly investment-related, not tax-related. Respondent contended that in making this investment Claimant paid a 7.5% sales charge which amounted to \$1,125.00. Respondent further contended that in April, 1990, Claimant liquidated his investment and a month after the liquidation, Claimant informed Mr. Marshall that his distribution in 1989 was taxable, not tax-deferred.

Page Two
AWARD
92-00330

Respondent asserted that the mutual fund investment was appropriate for Claimant, regardless of whether the investment was held in or out of a tax-deferred account and Mr. Marshall had merely provided an investment recommendation, not any specific tax advice.

RELIEF REQUESTED

Claimant, Melvin Williams requested \$1,150.00 in actual damages.

Respondent, Waddell & Reed, Inc. requested the claim be denied and costs assessed against Claimant.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Anne J. Crane was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on February 10, 1992 and by the Respondent on March 6, 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. Respondent, Waddell & Reed, Inc. is liable and shall pay to the Claimant, Melvin Williams the sum of \$1,125.00 in damages.
2. The parties shall bear their respective costs.
3. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Melvin Williams shall be retained by the NASD, Inc. Respondent, Waddell & Reed, Inc. is liable and shall pay to the Claimant the sum of \$50.00, as reimbursement.

Page Three
AWARD
92-00330

AFFIRMATION

I, ANNE J. CRANE, 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: July 13, 1992