

PUBLIC

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between :  
William A. Sharplin, Sr. :  
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 : Claimant :  
 :  
 vs. : CASE #92-00373  
 : AWARD  
 :  
 Kennedy, Cabot & Co. :  
 :  
 : Respondent :  
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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 31, 1992, Claimant William A. Sharplin, Sr., who appeared Pro Se, alleged that in August 1987 he rolled over a tax sheltered annuity into an IRA account with Respondent Kennedy, Cabot & Co., whereby he instructed them that the sum of \$17,510.14 was to be placed in a low load mutual fund appropriate for his retirement. Claimant further alleged that Respondent mishandled these funds when they put \$6,000.00 in an IRA investment in Putnam funds; another \$6,000.00 in a non-IRA investment with Putnam and they failed to invest the remaining \$5,510.14, where it remained in a taxable cash management account. Claimant contended that upon discovering Respondent's error, he repeatedly tried to contact them to correct their error to no avail. Claimant further contended that by that same time, the IRS and California Franchise Tax Board were billing him on these funds as ordinary income. Claimant asserted that when Respondent continued to fail to correct their error, he wrote to Putnam directly for assistance, at which time, Putnam converted the \$6,000.00 ordinary income account into an IRA as of January 10, 1992. Claimant further asserted that to date Respondent never resolved this problem and he still has \$5,510.14 uninvested, creating a grievous income loss, therefore, Respondent is liable for this loss.

Respondent Kennedy, Cabot & Co. by and through their in-house counsel George H. Kupper, Esq., maintained that on September 2, 1987 Claimant William A. Sharplin, Sr. deposited a check for \$17,510.14 in his IRA and on that same day, Claimant purchased two Putnam Funds for \$6,000.00 each; one in Putnam International Equity and the other in Putnam Option Income II. Respondent further maintained that on September 4, 1987, as was then the customary procedure, they cut two checks from Claimant's account and sent

them to Putnam to pay for these two purchases. Respondent contended that the purchase for the Option Income II was placed in a previously set up IRA account and Putnam merely recorded the other \$6,000.00 as qualifying the Claimant for a lower break-point in its overall commission charge, therefore, they did not put this into an IRA. Respondent further contended that these transactions left Claimant with a cash credit of \$5,510.14 in his account, which received interest on a monthly basis and subsequently, on December 29, 1988, Claimant transferred this sum with accrued interest to his Encino branch account. Respondent asserted that on May 9, 1989 Claimant requested a check withdrawal in the sum of \$6,173.87 which represents his original \$5,510.14 credit balance plus interest, whereby Respondent has no knowledge if Claimant rolled over these qualified funds. Respondent further asserted that Claimant received monthly statements, which clearly indicated what transpired regarding his original deposit of \$17,510.14 and when Claimant contacted them about his IRS problem, Respondent's Vice President of Operations, Ron Roberts, immediately took personal control over this problem. Respondent argued that at no time did they seek to avoid responsibility for its actions, instead Mr. Roberts acknowledged their error in writing to both, Claimant and the IRS. Respondent further argued that they acknowledge their error in regards to the second \$6,000.00 Putnam purchase, but cannot agree to pay an arbitrary figure chosen by the Claimant, which from all factual evidence appears to be grossly inflated and unsubstantiated.

#### RELIEF REQUESTED

Claimant William A. Sharplin, Sr. requested \$5,510.14 in actual damages plus the sum of \$2,592.00 for lost earnings together with \$1,175.00 in CPA fees and other expenses plus reimbursement of the NASD filing fee.

Respondent Kennedy, Cabot & Co. requested the claim be denied.

#### AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Audrey H. Ruben, Esq., 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 13, 1992 and by the Respondent on March 27, 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:

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1. Respondent Kennedy, Cabot & Co. is liable and shall pay to the Claimant William A. Sharplin, Sr. the sum of \$1,392.01 in 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 Claimant William A. Sharplin, Sr. shall be retained by the NASD, Inc. Respondent Kennedy, Cabot & Co. is liable and shall pay to the Claimant, the sum of \$150.00 as reimbursement.

AFFIRMATION

I, AUDREY H. RUBEN, ESQ., 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.

  
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Signature of Arbitrator

DATE OF DECISION: September 10, 1992