

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Matt & Frances Morelli

92-00437

Name of Respondents

Frank Bauer
Nevada Financial Services

CASE-SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 4, 1992, Claimants Matt & Frances Morelli who appeared Pro Se, alleged that in October 1985, in the presence of their accountant, Ken Theobald, Respondent Frank Bauer of Respondent Nevada Financial Services explained in detail the Government funds into which he was investing Claimants' money; which were set up with rear-loaded sales charges; however, months later Claimants discovered that Respondent Frank Bauer invested their money in a front load fund which had a 4% sales charged on \$70,000.00 deducted from the principal. Claimants further alleged that if Respondent Frank Bauer had done as he was instructed to and promised to do, Claimants would not have had to pay such a sales charge. Claimants contended that Respondent Frank Bauer told them that this investment would cost Claimants nothing as long as they kept the money on deposit for five years, which was totally false, and he told Claimants that the investment was guaranteed and could not go down in value; however, the principal of the investment diminished at a rapid pace. Claimants contended that because of Respondent Frank Bauer's false and misleading actions, in addition to Respondent Nevada Financial Services failure to supervise, caused them to suffer a loss and Claimants are seeking the return of the sales charges that should have never been assessed.

Respondent Frank Bauer who appeared Pro Se maintained that he presented to Claimants Matt & Frances Morelli the Franklin U.S. Government Securities Fund and explained that the fund had a bid and offer price whereby when they bought they paid the offer price but would only receive the bid price whereby the difference was 4% which was the sales charge or markup. Respondent Frank Bauer further maintained that he explained to the Claimants the sales charge and told them the 4% markup was not a concern if they planned to hold the investment for a long period. Respondent Frank Bauer contended that he provided Claimants a prospectus and never told them the fund was guaranteed. Respondent Frank Bauer asserted a Motion to Dismiss, pursuant to Section 15 of the NASD Code of Arbitration Procedure in that the six year

statute of limitations has expired, thus, the claim should be dismissed.

Respondent Nevada Financial Services, a non-member of the NASD without a contract to arbitrate, failed to file an Answer to the Statement of Claim.

RELIEF REQUESTED

Claimants Matt & Frances Morelli requested \$9,069.09 in actual damages.

Respondent requested the claim be dismissed in its entirety.

Respondent Nevada Financial Services failed to file an Answer to the Statement of Claim.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Kenneth L. Thompson, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on March 6, 1992 and not by the Respondents.

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. The claims of Claimants Matt & Frances Morelli against Respondents Nevada Financial Services and Frank Bauer are dismissed.
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 Matt & Frances Morelli shall be retained by the NASD.

AFFIRMATION

I, Kenneth L. Thompson, 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: May 18, 1993