

PUBLIC

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between	:	
	:	
Marie R. DiPalma	:	
	:	
Claimant	:	CASE #92-00859
	:	AWARD
vs.	:	
	:	
Empire National Securities, Inc.	:	
Joseph L. Aliotta	:	
	:	
Respondents	:	
	:	

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 12, 1992, Claimant Marie R. DiPalma by and through her counsel Katherine C. Phufas, Esq., Sole Practitioner, North Tonawanda, New York, alleged that in February 1987 she deposited \$50,000.00 in pension funds she received from her husband's death, with Respondent Joseph L. Aliotta, a registered representative at Respondent Empire National Securities, Inc., at which time, Claimant informed Respondent Joseph L. Aliotta that she had no previous investment experience and that since these funds represented the bulk of her estate she needed an investment that would keep her initial deposit safe but would produce a monthly income to supplement her social security benefits upon retirement. Claimant further alleged that Respondent Joseph L. Aliotta represented, promised and agreed that he understood Claimant's situation and would invest her funds accordingly. Claimant contended that Respondent Joseph L. Aliotta breached his promise, when he invested \$25,000.00 of the funds in the Franklin AGE High Income Fund, Inc. ("Income Fund"), a fund that invests in lower rated or unrated speculative securities referred to as "junk bonds" and subsequently, Respondent Joseph L. Aliotta invested the balance of the \$50,000.00 in the Franklin U.S. Government Securities Fund ("Government Fund"). Claimant further contended that following the enormous publicity generated by the stock market plunge about her investments, at which time, Respondent Joseph L. Aliotta advised her that her funds were not affected and that her principal was safe. Claimant asserted that she had no reason not to believe Respondent and her monthly statements from Franklin did not state the value of the account in dollars, therefore, she remained ignorant concerning the dwindling value of her principal. Claimant further asserted that in the summer of 1991, a newspaper article stated that Respondent

Joseph L. Aliotta had been convicted of Federal Tax Fraud, at which time, she contacted Respondent Empire National Securities, Inc., only to discover that her account had been purchased by Citicorp Select Investments by agreement with Respondent Empire National Securities, Inc. and the account value was reduced to a mere \$12,000.00. Claimant argued that Respondent Joseph Aliotta's failure to purchase a high rated, safe fund for Claimant constitutes a breach of his duty as broker and Respondent Empire National Securities, Inc. failure to diligently supervise Respondent Joseph L. Aliotta activities constitutes negligence, therefore, Respondents are liable for Claimants financial losses.

Respondent, Joseph L. Aliotta by and through his counsel Michael A. Brady, Esq. of Hagerty & Brady, Buffalo, New York, maintained that in late 1986 or early 1987 Claimant Marie R. DiPalma contacted Respondent Joseph L. Aliotta, a registered representative with Respondent Empire National Securities, Inc. to invest the entire sum of \$85,000.00 in pension funds she received whereby Respondent Joseph L. Aliotta discouraged that plan and instead encouraged her to place \$35,000.00 of the funds in a savings account. Respondent Joseph L. Aliotta further maintained that Claimant established a savings account at Respondent Empire National Securities, Inc. with the deposit of approximately \$35,000.00, at which time, Respondent Joseph L. Aliotta acknowledged that Claimant invested a total of \$50,000.00; \$25,000.00 in Franklin U.S. Government Securities Fund and \$25,000.00 in Franklin's AGE High Income Fund. Respondent Joseph L. Aliotta contended that he believed at the time that the two Franklin Mutual funds were solid funds with good track records and carefully discussed with Claimant the possible fluctuation in value of the principal as well as the relative risks. Respondent Joseph L. Aliotta further contended that the investments chosen were on the approved list of Respondent Empire National Securities, Inc. and for some years, both funds were well regarded in the industry and were producing substantial returns that Claimant was desirous in receiving. Respondent asserted that the annual statements from the funds showed the market value of the investment in dollars and from early 1987, until about September 1990, Respondent Joseph L. Aliotta saw Claimant every three or four weeks, at which time, she never complained about her account and in fact, she called Respondent Joseph L. Aliotta in August 1989 to advise that she had additional money to invest. Respondent Joseph L. Aliotta further asserted that his trial in Federal Court had absolutely nothing to do with his work in the securities industry as a broker and nothing to do with the investments complained about by Claimant. Respondent argued that the investment was suitable at the time, was from an approved list of funds recommended by

Respondent Empire National Securities, Inc. and was fully explained to Claimant, in addition Claimant's claim is barred by the three year statute of limitations and the claim should be dismissed.

Respondent requested that based on the failure of Respondent Empire National Securities, Inc. to submit to this arbitration, that the arbitrator be appointed to act pursuant to the NASD Code of Arbitration Procedure and dismiss the proceeding against Respondent Joseph L. Aliotta and refer Claimant to her remedies under applicable law.

Respondent Empire National Securities, Inc. by and through their counsel Jeremiah J. McCarthy, Esq. of Phillips, Lytle, Hitchcock, Blaine & Huber, Buffalo, New York maintained that they are no longer a member of the NASD, therefore, they do not consent to arbitrate this dispute. Respondent Empire National Securities, Inc. failed to file an Answer to the Statement of Claim.

RELIEF REQUESTED

Claimant, Marie R. DiPalma requested \$4,836.06 in actual damages or the present per value of the Government Fund multiplied by 2,458.61 shares plus interest together with attorneys' fees in the amount of \$100.00 and reimbursement of the NASD filing fee.

Respondent, Joseph L. Aliotta requested the claim be dismissed in its entirety.

Respondent Empire National Securities, Inc. 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, David Buch, 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 March 19, 1992 by the Respondent Joseph L. Aliotta on May 18, 1992 and not by Respondent Empire National Securities, Inc. as required by Sections 12 and 13 of the NASD Code of Arbitration Procedure.

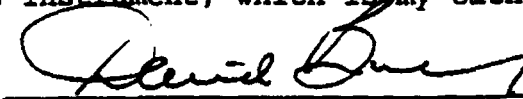
1. In accordance with Section 13 of the NASD Code of Arbitration Procedure the Respondent, Empire Securities, Inc. was served by regular mail on March 25, 1992 and given an opportunity to respond, which they failed to do so. Respondent Empire Securities, Inc. was notified on May 26, 1992, via certified mail, that their Statement of Answer was overdue. The signed certified mail receipt was returned date stamped May 29, 1992, evidencing their receipt of this correspondence. Respondent Empire National Securities, Inc. was notified on May 29, 1992, via certified mail, of the selected arbitrator pursuant to Section 21 of the NASD Code of Arbitration Procedure. Respondent Empire National Securities, Inc. failed to file an Answer to the Statement of Claim.
2. Pursuant to the By-Laws of the NASD the arbitrator determined that Respondent Empire National Securities, Inc. was required to submit to this arbitration proceeding and is, therefore, bound by the arbitrator's ruling and determination.

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 Claimant Marie R. DiPalma against Respondents Empire National Securities, Inc. and Joseph L. Aliotta are dismissed.
2. The parties shall bear their respective costs.
3. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Marie R. DiPalma shall be retained by the NASD, Inc.

AFFIRMATION

I, DAVID BUCH, 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.



Signature of Arbitrator

Date of Decision: October 7, 1992