

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Anita K. & Christina M. McNally, JTWROS

92-01574

Name of Respondents

Joseph W. MacMichael, Jr.  
Haddon Financial Group, Inc.

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REPRESENTATION

For Claimants Anita K. and Christina M. McNally ("Claimants"): Peter J. Mooney, Esq. of the law firm of White and Williams.

For Respondents Haddon Financial Group and Joseph W. MacMichael, Jr. ("Respondents"): Paul A. Snyder, Esq. of the law firm of Marshall, Dennehey, Warner Coleman & Goggin.

CASE INFORMATION

Statement of Claim filed: May 6, 1992

Claimants' Submission Agreement signed on: May 2, 1992

Joint Statement of Answer filed by Respondents on: July 21, 1992

Respondent Haddon Financial Group, Inc.'s ("Haddon") Submission Agreement signed on: July 15, 1992

Respondent Joseph W. McMichael, Jr.'s ("McMichael") Submission Agreement signed on: August 18, 1992

HEARING INFORMATION

Hearing Dates/Sessions:      February 23, 1993 - two sessions  
   February 24, 1993 - two sessions  
   March 2, 1993 - two sessions

Hearing Location: NASD Office - Philadelphia, PA

CASE SUMMARY

Claimants alleged that they were unsophisticated investors who relied solely on McMichael. McMichael, Claimants alleged, was acting within the scope of his employment at all times. Claimants alleged that McMichael knew that their investment objective was safety of principal and income. Claimants alleged that McMichael knew that the funds entrusted to him were for the sole support, maintenance and benefit of Claimant Anita McNally. Claimants alleged that McMichael advised claimants to buy speculative investments which were unsuitable for Claimant Anita McNally. Claimants alleged that McMichael failed to disclose the risks related to these investments and failed to provide Claimants with prospecti or other material information regarding the

investments. Claimants alleged that McMichael failed to disclose certain fees and commissions related to Claimants investment. Claimants alleged that during the period of November 1989 through January 1991, Respondents failed to provide Claimants with any statements of account. Claimants alleged that they were forced to rely on the verbal financial statements provided by McMichael. Claimants alleged they were kept in the dark as to the erosion of principal in the accounts. Claimants alleged that McMichael knew that the investments were steadily losing money, but never informed Claimants. Claimants alleged that McMichael was negligent, breached the standard of care of the securities industry, breached his implied contractual obligations and agreements and breached his fiduciary duties to the Claimants. Claimants alleged that McMichael's actions constituted fraud or deceit in violation of both State and Federal Securities Laws. Claimants alleged that because of McMichael's actions they have suffered and continue to suffer mental anguish and emotional distress. Claimants alleged that Haddon is liable to the Claimants at common law under the doctrine of respondent superior, since McMichael was its employee and acted within the scope of his duties as president of Haddon.

Respondents denied each and every allegation of wrongdoing asserted by the Claimants and specifically maintained that after Anita McNally's husband passed away, McMichael recommended an investment plan in six diverse funds and investments that together would provide Anita McNally a 10% cash yield which she sought to meet her monthly income needs. Respondents maintained that all risks associated with the investment were provided to Claimants and that the Claimants were provided with a prospectus for each investment recommended. Respondents maintained that Anita McNally withdrew a substantial portion of her monies from her account thereby diminishing the asset values. Respondents maintained that the investments were suitable for Claimants and that the decline in values is in part related to unforeseeable, adverse economic developments. Respondents further assert that some or all of Claimants' claims are barred or reduced by reason of comparative negligence. Respondents assert that Claimants claims are barred by the applicable statute of limitations.

#### **RELIEF REQUESTED**

Claimant requested compensatory damages in an amount no less than \$21,800 with interest from the date of the purchases of the investment in 1985 to the date of the arbitration, damages for emotional distress in an amount deemed appropriate by the panel, punitive damages adequate to deter the type of conduct that occurred in this matter; interest, costs, financial analyst fees, expert fees and reasonable attorneys' fees.

Respondents requested that the Claimants' claim be dismissed in its 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 and post hearing submissions, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondents McMichael and Haddon are jointly and severally liable to the Claimants and are directed to pay the Claimants the sum of **FORTY TWO THOUSAND FIVE HUNDRED AND 00/100 DOLLARS** (\$42,500); this amount is inclusive of interest. Once the Claimants have received said sum they are directed to return to Respondent Haddon the following investments: American Insured Mtg. 85, National Lease Income Fund - 4, Oppenheimer High Yield fund and Mass. Financial High Income Fund.

2. Each of the parties shall bear their own costs and expenses incurred, other than those specifically provided for herein.
3. That all other damage claims and motions are denied in their entirety.

**FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure ("Code") the following forum fees are assessed.

6 hearing sessions x \$400 = \$2400

Pursuant to Section 43(c) of the Code, the forum fee shall be split between the parties. Claimants are assessed forum fees in the amount of \$1200, but are entitled to offset this amount with their previously paid hearing session deposit of \$400, so that the amount due from the Claimants is \$800.

Respondents McMichael and Haddon are jointly and severally assessed forum fees in the amount of \$1200.

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

Concurring Arbitrator's Signature

Name

  
Richard B. Laden

Public/Industry

Date of Decision: May 10, 1993

2. Each of the parties shall bear their own costs and expenses incurred, other than those specifically provided for herein.
3. That all other damage claims and motions are denied in their entirety.

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Respondents McMichael and Haddon are jointly and severally assessed forum fees in the amount of \$1200.

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

Concurring Arbitrator's Signature  
Name

Michel J. Landron  
Michel J. Landron, Esq.

Public/Industry

Public

Executed on

~~DATE OF DECISION:~~

April 24, 1993

Date of Decision: May 10, 1993

2. Each of the parties shall bear their own costs and expenses incurred, other than those specifically provided for herein.
3. That all other damage claims and motions are denied in their entirety.

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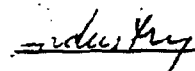
Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrator's Signature

Name

  
Arthur B. O'Connor

Public/Industry



Executed on:

~~DATE OF DECISION~~

4/28/93

Date of Decision: May 10, 1993