

PUBLIC

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Helene Sandra Myers

92-02787

Name of Respondent

Janney Montgomery Scott Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on August 19, 1992, Claimant Helene Sandra Myers, who appeared Pro Se, alleged that on March 15, 1991 she closed her IRA account with Mellon PSFS Bank at which time she received the sum of \$19,752.58 and subsequently on March 21, 1991 she purchased two municipal bonds from Respondent Janney Montgomery Scott, Inc. for the total amount of \$21,439.35. Claimant further alleged that she assumed that this was her new IRA account and the additional sum of \$1,686.80 would be her IRA contribution for the year, 1991. Claimant contended that her municipal bonds were always held by Respondent Janney Montgomery Scott, Inc. and when her current broker left Respondent, her bonds were returned to her on November 4, 1991 and November 5, 1991. Claimant further contended that when she received these bonds she wrote to the Internal Revenue Service ("IRS") on December 16, 1991 to find out how to handle her own IRA account. Claimant asserted that she contacted the Problem Resolution Office of the IRS and spoke to Mr. Edinger, at which time, Mr. Edinger assured her that an IRA account was possible and that Claimant should have a representative from Respondent contact him, whereby he would instruct them on how to accomplish this. Claimant further asserted that she spoke to Mr. Margolin, Mr. Waitneight and Mr. Wilde of Respondent at which time, they refused to contact the IRS. Claimant argued that she did not have an IRA account and was forced to pay an Income Tax of \$5,720.00, unnecessarily. Claimant further argued that no one at Respondent contacted Mr. Edinger at the IRS and in fact, Claimant's letter dated March 9, 1992 to Respondent's President, Mr. Norman Wilde, remains unanswered. Claimant further alleged that Respondent's refusal to contact the Problem Resolution Office of the IRS, caused her to sustain losses.

Respondent Janney Montgomery Scott, Inc. by and through their counsel Dennis D. Karpf, Esq., Sole Practitioner, maintained that in March 1991 Claimant Helene Sandra Myers closed her IRA account and received the funding, at which time, she instructed Respondent to purchase two municipal bonds. Respondent further maintained that Claimant never instructed nor informed Respondent or it's broker to create an IRA rollover account or a new IRA. Respondent contended that Claimant provides absolutely no evidence, documents or law to permit creation of a rollover IRA or new IRA account on March 15, 1991 and in fact, IRC Section 402 prohibits such retroactive change under these circumstances. Respondent further contended that Claimant provides absolutely no evidence that she spoke with a Mr. Edinger of the IRS nor that Mr. Edinger in fact assured her that an IRA account was possible, thus Claimant's alleged unsupported communications with the IRS are irrelevant and immaterial. Respondent asserted that Claimant herself admits that she did not make inquiry with the IRS as to opening her IRA account until December 16, 1991 long after the 60 day period permitted for an IRA rollover under IRC Section 402(a) and long after the March, 1991 purchase through Respondent, thus the claim should be dismissed.

RELIEF REQUESTED

Claimant Helene Sandra Myers requested \$4,456.00 in actual damages.

Respondent Janney Montgomery Scott, Inc. requested the claim be dismissed and they be awarded attorney's fees and costs.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Victoria E. Johnson, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on August 11, 1992 and by the Respondent on October 22, 1992.

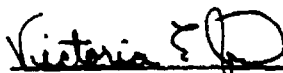
And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent Janney Montgomery Scott, Inc. is liable and shall pay to the Claimant Helene Sandra Myers the sum of \$1,000.00 in damages.
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 Helene Sandra Myers shall be retained by the NASD, Inc. Respondent Janney Montgomery Scott, Inc. is liable and shall pay to the Claimant the sum of \$125.00 as reimbursement.

AFFIRMATION

I, **VICTORIA E. JOHNSON**, 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: 4/5/93

DATED BY THE NASD, INC.: 4/6/93

Arbitrator's Finding of Fact

From: Victoria Johnson
Public Arbitrator
National Association of Securities Dealers
Date: 5 April, 1993

Subject: Award and Detailed Explanation of Award for Case 92-2787

The award of \$1000 is given to Ms. Helene S. Myers. It is provided to compensate Ms. Myers for her losses due to the circumstances presented in the claim. It was not clear whether Ms. Myers did or did not understand that by closing one IRA without explicitly opening another, she had exposed the monies transferred to possible taxation.

It was clear that Ms. Myers has had experience with securities, as evidenced by 1) her letter of March 9th, addressed to Mr. Wilde, where she details her research into municipal bond rates and 2) the extent of her portfolio at Janney Montgomery Scott (JMS). With that in mind, there is the possibility that the attempt to self-manage her JMS portfolio preempted any advice offered by her brokers.

The response provided by JMS did not appear to be strong in guidance for Ms. Myers. The representatives of JMS have not documented any attempt to counsel Ms. Myers on the uses or effects an IRA, either before or after any disclosure about the origin of money was used to purchase municipal bonds on 3/15/91 and 3/18/91.

Victoria E. Johnson