

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Deana Susie Nelson Pratt, individually and as
Guardian of Anthony Jack Brewster and Rebecca
Michelle Owen, Minors

92-02908

Name of Respondent

The Principal/Eppler, Guerin & Turner, Inc., f/k/a
Eppler, Guerin & Turner, Inc.

REPRESENTATION

For Claimant: Deana Susie Nelson Pratt, individually and as Guardian of Anthony Jack Brewster and Rebecca Michelle Owen, Minors, was represented by Broadus A. Spivey, Esq. and Thomas P. Prehoditch, Esq. of Spivey, Grigg, Kelly & Knisely, located in Austin, Texas.

For Respondent: The Principal/Eppler, Guerin & Turner, Inc., formerly known as Eppler, Guerin & Turner, Inc. was represented by David B. Dyer, Esq. of Jenkins & Gilchrist, P.C., located in Dallas, Texas.

CASE INFORMATION

Statement of Claim filed: August 28, 1992.

Claimant's Submission Agreement signed on: August 5, 1992.

Statement of Answer filed by Respondent The Principal/Eppler, Guerin & Turner, Inc. on: October 7, 1992.

Respondent The Principal/Eppler, Guerin & Turner, Inc.'s Submission Agreement signed on: October 5, 1992 by James W. Massie III, Senior Vice President and General Counsel, The

Principal/Eppler, Guerin & Turner, Inc.

Notice of Dismissal of Claim against Jon Keith Byer filed on: January 28, 1993.

David LaPier's Voluntary Nonsuit of Cross-Claim against Eppler, Guerin & Turner, Inc. filed on: January 26, 1993.

Claimant's Amended Notice of Dismissal of Claim against Respondent David LaPier filed on: May 24, 1993.

David LaPier's Notice of Dismissal with Prejudice of all claims against Claimant filed on: May 21, 1993.

Claimant's Motion for Leave to File First Amended Statement of Claim and First Amended Statement of Claim filed: May 20, 1993.

HEARING INFORMATION

Pre-Hearing Conference:	None Held.
Hearing Dates/Sessions:	May 26, 1993 for Two (2) sessions; May 27, 1993 for Three (3) sessions.
Hearing Location:	Houston, Texas.

CASE SUMMARY

Claimant Deana Susie Nelson Pratt, individually and as Guardian of Anthony Jack Brewster and Rebecca Michelle Owen. Minors. ("Pratt") alleged that Respondent The Principal/Eppler, Guerin & Turner, Inc. ("EGT"), through its employees or agents, misrepresented the risks of certain investments and induced Pratt to invest in securities which were unsuitable given the type of account and her objectives. Pratt specifically alleged that:

1. Pratt, as guardian of the minor children, was responsible for managing the guardianship accounts. Prior to April of 1989, the corpus of the accounts included certificates of deposit that generated interest income which was used to pay for necessities and other personal expenses for her children;
2. On or about April 28, 1989, an account executive with EGT influenced and persuaded Pratt to liquidate the certificates of deposit, which were withdrawn early, and replace the certificates with shares of the MFS Multimarket Income Trust, a closed-end mutual fund;
3. The account executive made numerous misrepresentations to Pratt about the

Practices-Consumer Protection Act for knowingly engaging in an unconscionable action or course of action; negligence; negligent and intentional infliction of emotional distress; and for violation of Section 10b and Rule 10b-5 of the Federal Securities Exchange Act.

Respondent EGT denied the material allegations of the Statement of Claim, alleging that:

1. Around April of 1989, Pratt contacted her neighbor, an EGT broker, about increasing the income from the guardianship accounts of her children, and the two discussed the pluses and minuses of moving the guardianship accounts from CD's into mutual funds. After the consultation, the funds were transferred to EGT and invested in the MFS Multimarket Income Trust and Washington Mutual Investors Fund. The risks were fully presented to Pratt and she made the decision to invest in what was a suitable investment for the guardianship accounts;
2. Egt and its brokers had no duty to give a legal opinion as to whether particular instruments were or were not approved for guardianship accounts by the Texas Probate Code. Pratt and her attorney bore the legal duty to determine the appropriateness of the investment and seek necessary court approval. EGT agreed to provide investment advice, not legal advice;
3. Pratt advised the new EGT broker in approximately August of 1990 that she wanted to sell the MFS fund. Her attorney gave his blessing as to the legality of the guardianship investing in zero coupon United States Treasury Bonds and under Section 389(a) of the Texas Probate Code, these are specifically authorized investments;
4. Pratt informed the EGT broker that she did not need immediate income from the accounts to support the children. If she had done so, the broker would have recommended regular U.S. Treasury Bonds, rather than zero coupon bonds. However, these bonds are highly liquid and if the bonds remaining in the account were sold, both accounts would receive a profit after commissions, even though Pratt elected to liquidate the majority of the bonds prior to maturity. In addition, the bonds could be sold to generate sufficient funds to pay any income taxes payable; and
5. The Texas Deceptive Trade Practices-Consumer Protection Act does not apply in this matter.

RELIEF REQUESTED

Claimant Pratt requested entry of an award against Respondent for actual damages in the sum

fund, including that the money realized from the sale would be placed in fully secured, interest bearing government securities such as Treasury bonds guaranteed by the Federal government and that the loss from the early withdrawal would be made up by the higher interest and income produced by the MFS Multimarket Income Trust. This was false. In addition, Pratt was not told of the risks of investing in the fund and that the shares in such a fund fluctuate with the market and might decrease in value over time. Furthermore, the purchase of the fund was not an approved investment for guardianship accounts under the Texas Probate Code and EGT, acting in a fiduciary capacity, knew or should have known which investments are approved and not approved under the Texas Probate Code;

4. Sometime in the Summer of 1990, a new account executive took over the account. On or about September 17, 1990, the remaining shares of MFS Multimarket Income Trust were sold at a significant loss in value in order to purchase the following securities: 1) U.S. Treasury Original Issue Discount Securities with a face value of \$18,000.00 and a maturity date of August 15, 1994 for Rebecca's guardianship account and 2) U.S. Treasury Original Issue Discount Securities, with a face value of \$100,000.00 and a maturity date of August 15, 1993 for Anthony's guardianship account;

5. These investments were not suitable for the account because the investment does not generate current income; it generates income only at the maturity date. Pratt was told that the investment would provide more current income pursuant to her express objective. In addition, this investment represents unpaid, but accrued, interest that is currently taxable, although no distribution of cash can be made until maturity date. Furthermore, the investment is unsuitable by the terms of the Texas Probate Code because the value of this type of investment fluctuates with interest rates, and because one cannot hold such securities until maturity runs the risk of loss; and

6. Little, if any, income has been generated by these investments to pay for Rebecca and Anthony's necessities and other personal expenses, resulting in Pratt and her husband having to use a larger portion of their own income to take care of the needs of their children.

Based upon the above allegations, Pratt asserted claims for violations of the Texas Securities Act, Tex. Rev. Civ. Stat. Ann. Art. 581-33(2) (Vernon 1992); breach of fiduciary duty; common law fraud; statutory fraud as defined in Tex. Bus. & Com. Code Sec. 27.01; breach of contract; breach of duty of good faith and fair dealing; violation of the Texas Deceptive Trade Practices-Consumer Protection Act, Par. 17.46(b)(5), Par. 17.46(b)(7) and Par. 17.46(b)(23) for misrepresentation; violation of Par. 17.45(5) and Par. 17.45(9) of the Texas Deceptive Trade

of \$55,000.00; damages in the sum of \$350,000.00 for the infliction of emotional distress; punitive damages in the sum of at least \$3,000,000.00; treble damages pursuant to the Texas Deceptive Trade Practices-Consumer Protection Act ("DTPA"); attorneys' fees pursuant to the DTPA, Par. 38.001 of the Tex. Civ. Prac. & Rem. Code and Par. 27.01 of the Tex. Bus. & Com. Code; for costs of suit; for both pre-judgment and Post-judgment interest at the lawful rate; and for such other relief to which the Claimant was justly entitled.

Respondent EGT requested that the Claimant take nothing by her claims and that EGT be awarded its costs, fees and expenses associated with this proceeding.

OTHER ISSUES CONSIDERED & DECIDED

David LaPier ("LaPier") and Jon Keith Byer ("Byer") were named Respondents in the original Statement of Claim. By notice dated January 27, 1993, Claimant Pratt voluntarily dismissed Byer, without prejudice, because of his bankruptcy filing. In addition, by notice dated May 17, 1993, Claimant Pratt voluntarily dismissed, with prejudice, all claims against Respondent LaPier. By notice dated January 22, 1993, LaPier voluntarily nonsuited, without prejudice, all claims against EGT. Furthermore, by notice dated May 21, 1993, LaPier dismissed, with prejudice, all claims against Claimant Pratt. Because of the above actions, LaPier and Byer did not appear at hearing as parties in this action.

At hearing, Claimant's Motion for Leave to File First Amended Statement of Claim was granted by the panel without objection.

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 originals remain on file with the NASD.

AWARD

After considering the pleading, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The claims asserted by Claimant Deana Susie Nelson Pratt, individually and as guardian of Anthony Jack Brewster and Rebecca Michelle Owen, Minors, is hereby dismissed with prejudice and denied in its entirety;
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Five (5) hearing sessions x \$1,000.00 per session = \$5,000.00.

The National Association of Securities Dealers, Inc. shall retain the \$250.00 claim filing fee and the \$1,000.00 hearing session deposit previously deposited by the Claimant, Deana Susie Nelson Pratt. Claimant Deana Susie Nelson Pratt is liable for and shall pay to the NASD additional forum fees in the sum of \$1,500.00. Respondent The Principal/Eppler, Guerin & Turner, Inc., f/k/a Eppler, Guerin & Turner, Inc. is liable for and shall pay to the NASD forum fees in the sum of \$2,500.00.

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

Concurring Arbitrators' Signatures

Name

Date

George A. Sellnau, Esq.
George A. Sellnau, Esq.
Public Arbitrator
Chairperson

September 16, 1993

Eugene A. Depperschmidt
Eugene A. Depperschmidt
Public Arbitrator

September 16, 1993

David P. Hess
David P. Hess
Industry Arbitrator

October 4, 1993

For NASD Use Only

Date of Service on Parties: _____