

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Shirley Amato

92-02909

Name of Respondents

McDonald and Company Securities  
Richard Mapes

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**REPRESENTATION**

For Claimant Shirley Amato ("Claimant"): she represented herself.

For Respondents McDonald and Company Securities ("McDonald") and Richard Mapes ("Mapes"): Brian M. Eisenberg, of Calfee, Halter et al.

**CASE INFORMATION**

Statement of Claim filed: August 28, 1992.

Motion to Preclude Respondent McDonald's Statement of Answer filed: December 14, 1992.

Amended Statement of Claim filed: March 2, 1993.

Claimant's Submission Agreement signed on: August 24, 1992.

Objection to Claim as Not Subject to Submission Pursuant to Section 15 of the NASD Code of Arbitration filed by Respondents on: November 11, 1992.

Joint Statement of Answer filed by Respondents on: March 9, 1993.

As required, pursuant to Section 25 of the Code of Arbitration Procedure ("Code") the Respondents did not file Submission Agreements.

**HEARING INFORMATION**

Hearing Date/Session: March 16, 1993/1 session.

Hearing Location: NASD, Cleveland, OH.

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### CASE SUMMARY

Claimant alleged she told Mapes she was a conservative investor and her objectives included preservation of principal. Claimant alleged Mapes knew she did not wish to purchase any bond presenting unforeseeable or foreseeable risks. Claimant alleged the quality of her investments was investment grade. Claimant alleged she trusted Mapes' investment advice and relied upon the recommendations made by him. She alleged that on May 15, 1985, \$100,000.00 of an Ohio State Economic Rev Bond 12.00% due 12-1-1989 was purchased for her account. She further alleged it has since defaulted and has not paid any interest. Claimant also alleged that in 1991 Robert Clutterbuck ("Clutterbuck"), employed by McDonald, the owner of \$120,000.00 of these bonds offered the advice that if offered to him he would sell his bonds to Joseph Reis ("Reis") at \$.60 on the dollar. Claimant also alleged that in August of 1992 she met with Mr. Sommers ("Sommers") at McDonald wherein she made sure Sommers understood her original investment objectives. Claimant alleged that when Mapes called and offered Convention Place bonds for purchase, it was with the implied understanding that they met her investment criteria for safety. She alleged she reminded Mapes of this and he stated the bonds were to be issued by the State of Ohio for the Convention Place, Ltd., insured and guaranteed. Claimant alleged Mapes stated the entire principal amount would be paid on December 1, 1989, that interest would be paid on June 1 and December 1 of each year until maturity, and that these bonds would meet her previously stated objective for safety. Claimant alleged Respondents did not disclose that the State of Ohio had limited its liability for the Development Bonds to the income derived from a portion of the Convention Place, a retail shopping center. Claimant alleged Respondents misrepresented the objectives of safety and preservation of principal by omitting the financial risk of the Convention Place. Further, Claimant alleged Respondents were negligent in their failure to supervise Reis and never disclosed that he had been discharged from his duties as a securities broker by a former employer before recommending him as successor trustee for the Development Bonds. Finally, Claimant alleged Respondents failed to deliver a copy of the original text of the bonds which stated they were not insured by, not general obligation bonds of and did not constitute a debt or pledge of the full faith and taxing power of the State of Ohio.

Respondents objected to the attempted submission of Claimant's claim as not being properly subject to submission before the NASD pursuant to Section 15 of the Code.

Respondents acknowledged that the Bonds were in default. Respondents asserted Claimant's claim that she informed Mapes she was a conservative investor was irrelevant and that she had a non-discretionary account. Respondents maintained that since Claimant's purchase of the bonds in question was on May 17, 1985, the issue of what was represented to Claimant at the time of sale of these bonds was not in issue in this arbitration. Respondents asserted that the appointment of Reis was advised initially by State National Bank of Maysville, KY, not either

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of the Respondents. Respondents asserted Mapes had a conversation with Claimant regarding the appointment of Reis but contest her remaining allegations; they also maintained it was not their obligation to pass on the appropriateness of Reis as a trustee since that issue was pending before the Common Pleas Court of Hamilton County, OH. Respondents maintained the Court found that no bond holder had objected to Reis' appointment and that he was a suitable person to serve as successor trustee. Respondents maintained that Claimant's allegations that Reis was employed at Seasongood & Mayer as a securities broker and was reportedly discharged for violating in-house procedures are irrelevant. Respondent asserted that Claimant's allegation regarding their not disclosing that the State of OH had limited its liability for the development bonds are irrelevant since the purchase of the bonds was not a subject of this arbitration and the confirmation slip referred to the bonds as revenue bonds. Respondents asserted Claimant's allegations regarding misrepresentation of the objectives of safety of principal regarding Convention Place are outside the scope of the arbitration. Respondents maintained Claimant's allegation of negligence in Respondents' failure to supervise Reis are outside the scope of this arbitration and that Claimant's allegation regarding Reis' being discharged by a former employer is irrelevant. Respondents did not dispute Claimant's allegation that Clutterbuck told her he would sell his bonds to Reis at \$.60 on the dollar. Finally, Respondents admitted the bonds were structured to pay interest as alleged, but denied misrepresenting the nature of the bonds.

#### **RELIEF REQUESTED**

Claimant requested: actual damages in the amount of \$181,038.74, including principal amount of the bond, premium amount paid, interest, unpaid interest of December 1988 - December 1992; plus accruing and post judgment interest, compensatory damages and attorney fees; and punitive damages in the amount of \$1,000,000.00.

Respondents requested: dismissal of the Statement of Claim with prejudice; and costs.

#### **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 originals remain on file with the NASD.

Pursuant to the by-laws of the NASD, it was determined that Respondents were required to submit to this arbitration, and therefore, were bound by this panel's rulings and determinations.

This arbitration panel has determined that Claimant stated on the record at the hearing that she was willing to proceed with the hearing and would be willing to abide by the Director of Arbitration's determination that allegations of Respondents' wrongdoing occurring prior to

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August 24, 1986 were not eligible for submission to arbitration.

### AWARD

After considering the pleadings, 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 of Claimant Shirley Amato are denied;
2. All other claims are denied;
3. Each party shall bear its own expenses, including attorneys' fees, except that Respondents are hereby liable, jointly and severally, and shall pay to Claimant the sum of \$250.00. Said amount to reimburse to Claimant partial payment of the \$500.00 hearing session deposit previously paid to the NASD by Claimant.

### FORUM FEES

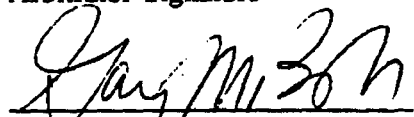
Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the \$150.00 non-refundable filing fee previously paid by Claimant and the following Forum Fees are assessed.

1 session X \$500.00 = \$500.00 minus hearing session deposit of \$500.00 = net \$0.0 due.

Forum fees Assessed Against:

1. Claimant is hereby liable in the amount of \$250.00; however, in lieu of further payment the NASD shall retain the \$500.00 hearing session deposit previously paid by Claimant and Claimant shall be reimbursed by Respondents as noted above.
2. The NASD shall reimburse to Claimant the sum of \$300.00 which represents an overpayment by Claimant of the hearing session deposit.

Arbitrator Signature

  
Gary M. Bash/Public Arbitrator

Date of Decision: March 29, 1993

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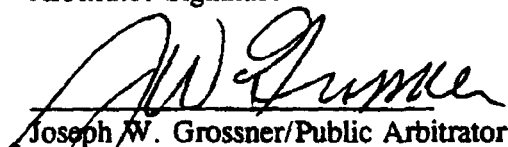
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Joseph W. Grossner/Public Arbitrator

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Arbitrator Signature

  
Donald Rioux/Industry Arbitrator

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