

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Robert & Elizabeth Kozub

92-02911

Name of Respondents

Butcher & Singer, Inc.  
Maxine Aronson Freilich

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**REPRESENTATION**

For Claimants Robert & Elizabeth Kozub ("Claimants"): Earle R. Frost, Esq., of Frost & Danchak.

For Respondents Butcher & Singer, Inc. ("Butcher") and Maxine Aronson Freilich ("Freilich"): Paula D. Shaffner, Esq., of Saul Ewing et al.

**CASE INFORMATION**

Statement of Claim filed: August 31, 1992.

Claimants' Response to Respondents' Answer filed: January 18, 1993.

First Amended Statement of Claim filed: April 13, 1993.

Claimants' Submission Agreement signed on: August 27, 1993.

Joint Statement of Answer filed by Respondents on: December 1, 1992.

Respondent Butcher's Submission Agreement signed on: March 12, 1993.

As required, pursuant to Section 25 of the Code of Arbitration Procedure, Respondent Freilich did not execute a Submission Agreement.

**HEARING INFORMATION**

Hearing Date/Sessions: May 12, 1993/2 sessions.

Hearing Location: The Guest Quarters Hotel/Columbus, OH.

### CASE SUMMARY

Claimants alleged they purchased shares of Putnam High Income Government Trust ("Putnam") based on Respondents' recommendation. Claimants alleged they went to Butcher to seek advice on how to best invest their retirement funds in order to receive a good yield, but stated that safety of principal was their main concern. Claimants alleged Freilich represented there was hardly any risk in this investment because it was backed by the Full Faith and Credit of the United States Government. After investing, Claimants alleged they received distributions; however, they were unaware the distributions remained consistent in part because of a realization of capital gains and a return of capital and that Freilich did not disclose that the distributions would or could be a return of capital.

Claimants also alleged they phoned Freilich in October 1987, because the "market" had fallen 500 points; however, Freilich told them that their investment was safe.

Claimants further alleged that in or about March 1988 Putnam ceased paying capital gains distributions and there overall distributions dropped. Claimants alleged that George Hoffman ("Hoffman"), who succeeded Freilich when she left Butcher, stated there was nothing to worry about. Claimants alleged they telephoned Butcher sales representatives randomly, but were told not to worry. Claimants alleged that in December 1991, Butcher sales representative Ronald Dunk ("Dunk") informed them that the investment manager of Putnam had done something wrong and had been replaced. Claimants alleged Dunk offered to switch Claimants' investment to American Capital ("American") without a commission charge. Claimants alleged they declined the offer. Claimants alleged Respondents failed to know their customers; breached their fiduciary duty; misrepresented the Putnam investment; and perpetrated the wrongful nature of the investment for Claimants. Finally, Claimants alleged Butcher failed to supervise its sales representative.

Respondents alleged Claimants contacted Freilich after reading an investment article she had written. Respondents maintained Freilich recommended Claimants diversify their investments; however, they elected to invest the entire sum in Putnam, which was realizing an attractive yield at that time. Respondents asserted the nature of the investment, and its advantages and disadvantages were discussed with Claimants and they were provided with a prospectus. Respondents asserted Claimants elected to take possession of the Putnam certificate and received distributions directly from Putnam; thereby receiving all distribution notices, updated prospectuses, shareholder information and proxy materials directly from Putnam.

Respondents maintained that the account was never active after it was assigned to Hoffman and Dunk; however, when Claimants expressed dissatisfaction with their return, Hoffman suggested alternatives, including American. Respondents maintained the reduction in value of Putnam is attributable to difficulties experienced in the financial market and not to Butcher or its registered

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representatives. Finally, Respondents moved to dismiss Claimants' claims due to applicable statutes of limitations and Section 15 of the Code.

Claimants responded to Respondents' Statement of Answer and motions to dismiss by alleging that their claims were not barred by the statutes of limitation and adding that Respondents' conduct was the basis of their Statement of Claim.

#### **RELIEF REQUESTED**

Claimants requested: actual damages in the amount of \$18,797.59, plus interest and/or an amount of loss of use on all such sums; a refund of improper commissions generated from Claimants' investment; attorneys' fees; and costs.

Respondents requested: Claimants' claim for damages be denied in all respects; and costs.

#### **OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that a handwritten, signed Award may be entered. In this case, the parties have agreed to receive a conformed copy of the Award while the original remains on file with the NASD.

1. The arbitrator made the following rulings with respect to Respondent Freilich:
  - a. Pursuant to the bylaws of the NASD, the arbitrator determined that Freilich was required to submit to this arbitration, and therefore, was bound by his rulings and determinations.

#### **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. The claims of Claimants are denied;
2. Respondents' motions to dismiss based on the statute of limitations and Section 15 of the Code are denied;
3. Respondents' motion to dismiss Freilich on jurisdictional grounds is denied;
4. Claimants' motion to bar Respondents' Statement of Answer is denied;

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5. Claimants' motion that Freilich not be permitted to testify due to the fact she refused to execute a Submission Agreement is denied;
6. All other claims are denied;
7. Each party shall bear its own expenses, including attorneys' fees.

**FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the \$100.00 non-refundable filing fee previously paid by Claimants and the following Forum Fees are assessed.

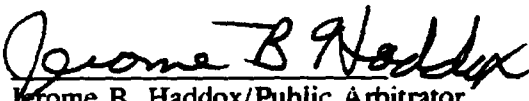
2 sessions X \$300.00 = \$600.00 minus hearing session deposit of \$300.00 = net \$300.00 due.


Forum fees Assessed Against:

1. Claimants are hereby liable in the amount of \$300.00; however, in lieu of further payment, the NASD shall retain the \$300.00 hearing session deposit;
2. Respondents are hereby liable, jointly and severally, and shall pay to the NASD the sum of \$300.00.

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

Arbitrator's Signature

  
Jerome B. Haddox/Public Arbitrator

  
Executed

Date of Decision: June 16, 1993