

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Mary T. Zummo
Valerie J. Fernandez

92-02950

Name of Respondents

A.J. Brent
FSC Investment Planning, Inc.
Keogler Morgan & Co.

REPRESENTATION

Claimants Mary T. Zummo ("Zummo") and Valerie J. Fernandez ("Fernandez") were represented by Alan J. Fedor, Esq. of Fedor & Fedor, Largo, FL.

Respondent A.J. Brent ("Brent") was pro se. Respondents FSC Investment Planning, Inc. ("FSC") and Keogler Morgan & Co. ("Keogler") were represented by Shawn Holtzclaw, Esq. of Cushing & Morris, Atlanta, GA.

CASE INFORMATION

Statement of Claim filed: September 1, 1992 and amended August 13, 1993.
Claimants' Submission Agreements signed on: August 24, 1992 by Zummo and on June 25, 1993 by Fernandez.

Statement of Answer filed by Respondent Brent on: October 26, 1992.
Respondent Brent's Submission Agreement signed on: October 20, 1992.
Statement of Answer filed by Respondents FSC and Keogler on: May 16, 1994.
Fsc's Submission Agreement signed on: May 10, 1994 by Royal Sorensen on behalf of FSC. Keogler's Submission Agreement signed on: May 10, 1994 by Chris Guerin on behalf of Keogler.

HEARING INFORMATION

Hearings were held on April 13, 1993, June 29 & 30, 1994. The hearings, which took place in Tampa, FL, lasted a total of 4 sessions.

CASE SUMMARY

Claimants alleged that: Respondent Brent misrepresented a number of major considerations; Brent assured Claimants that his investment proposals were safe and offered higher yields than their holdings in Fidelity Mutual Funds and Pepsico stock; based on Respondents' advice, Claimants liquidated their investments providing the proceeds to Respondents for the purchase of certain Kemper Mutual Funds and a management service; Claimants failed to receive prospectus materials; and, within two months Claimants suffered substantial losses. Claimants further alleged that : Brent misrepresented his position as a Vice President of FSC; and, FSC as a legal corporate entity had been terminated in the State of Florida prior to any of these transactions.

Respondent, Brent, alleged that: he never said he would be managing their investments; he explained to Claimants that the diversity of a mutual fund coupled with a money manager would provide the optimum chance for appreciation; and, the "depletion of funds" was a result of the management fee, which they fully understood, and a temporary drop in the market value of the mutual fund.

Respondents, FSC and Keogler alleged that: Claimants were fully informed as to the proposed investments; Claimants chose to follow Respondents' advice; Claimants decided to liquidate the investment shortly after investing; and, the legal status of FSC is irrelevant to this case.

RELIEF REQUESTED

Claimant, Zummo, requested damages in the amount of \$20,000.00 and Fernandez requested damages in the amount of \$4,000.00. Additionally, at the hearing, Claimants requested punitive damages and costs.

Respondent, Brent, requested dismissal of claim and Respondents, FSC and Keogler, requested dismissal of claim and that all expenses of arbitration be charged against Claimants, including attorneys' fees.

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 be entered. In either case, the parties have agreed to receive conformed copies of the Award while the original remains on file with the NASD.

AWARD

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

1. Respondents are liable, jointly and severally, and shall pay compensatory damages to Claimants as follows:

Mary T. Zummo the amount of \$18,300.00
Valerie J. Fernandez the amount of \$3,100.00

2. Claimants request for punitive damages is denied.
3. Respondents request for attorney's fees and costs is denied.

OTHER COSTS

1. Respondents shall pay Claimants costs and expenses as stated in the affidavit, presented at the hearing, in the amount of \$787.94 for copying, mailing, travel, telephone calls and other costs.
2. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including attorney's fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrator has assessed Forum Fees in the amount of: \$1,200.00 (\$300.00 x 4 sessions)

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1. Claimants, Zummo and Fernandez, are hereby assessed Forum Fees in the amount of \$600.00, for which the NASD shall retain the \$400.00 previously paid by Claimants in partial satisfaction thereof. Leaving a balance due to the NASD of \$200.00.
2. Respondents, Brent, FSC, and Keogler, are hereby assessed \$600.00 payable to the NASD.
3. The NASD shall retain the \$100.00 nonrefundable filing fee previously paid by Claimants.

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

Arbitrator's Signature
Name

Public/Industry

JS/
James A. Cormack

Date of Decision:

8-8-94