

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between

Annie M. McCants and  
Annie M. Morrison

Claimants

CASE #92-03031  
AWARD

vs.

Mutual of Omaha Fund Management Company

Respondent

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on September 10, 1992, Claimants Annie M. McCants and Annie M. Morrison who appeared Pro Se, alleged that on March 23, 1992 Claimant Annie M. Morrison wrote a letter to Mutual of Omaha Fund Management Company requesting liquidation of all shares held in the account titled Annie M. McCants and Annie M. Morrison JTWROS whereby Annie M. McCants, her mother, had died on March 14, 1992; therefore, Claimant Annie M. Morrison enclosed a certified copy of the death certificate and as the now sole owner of the account, she gave written instructions that it be liquidated. Claimant Annie M. Morrison further alleged that on April 7, 1992, the Respondent wrote a letter to her requesting a South Carolina State Tax Waiver and subsequently, she provided this whereby the shares were liquidated on May 5, 1992. Claimant Annie M. Morrison contended that it is her position that the 8,262.462 shares should have been liquidated on March 30, 1992, at the then current price of \$11.83 per share with a net proceeds of \$97,744.93 instead of the liquidated price of \$10.97 per share, with proceeds of \$90,639.21, therefore, Claimant should receive the difference of these two figures.

Respondent Mutual of Omaha Fund Management Company by and through Robert S. Woodruff, Assistant Secretary and Attorney maintained that on March 30, 1992 they received Claimant Annie M. Morrison's letter of March 23, 1992 along with a certified copy of the death certificate for Annie M. McCants, requesting a full liquidation of the account of Annie M. McCants and Annie M. Morrison JTWROS, at which time, the share price on March 30, 1992 was \$11.83. Respondent further maintained that on April 7, 1992 they sent a letter to Claimant Annie M. Morrison, extending their sympathies, and advising that a South Carolina Tax Waiver was required to close the account whereby South Carolina law provides that Respondent may not "transfer or deliver" such an account until we have received a Tax Waiver or Consent from the State of South Carolina or Respondent would have been subject to the amount of any tax, plus interest and a \$1,000.00 penalty for making a transfer

without having been presented a Waiver or Consent. Respondent contended that on April 9, 1992, they received a call from Claimant Annie M. Morrison's husband regarding the liquidation whereby they informed him of the Waiver or Consent requirement and subsequently on April 13, 1992 they sent Claimant Annie M. Morrison a letter explaining their position. Respondent further contended that on May 5, 1992 they received the proper documentation, at which time, the shares were liquidated the same day at a price of \$10.97. Respondent asserted that they are not liable for any damages to Claimant in that they were not permitted to either liquidate or forward the proceeds from the account until they had received both the certified copy of the death certificate and the consent to transfer.

#### RELIEF REQUESTED

Claimant Annie M. McCants and Annie M. Morrison requested \$7,105.72 in actual damages.

Respondent Mutual of Omaha Fund Management Company requested the claim be dismissed.

#### AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, H. Victor Schwimmer, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on September 28, 1992 and by the Respondent on October 13, 1992.

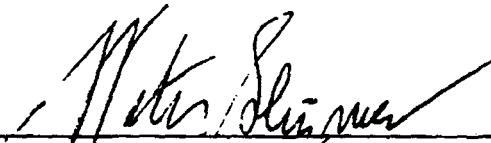
And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent Mutual of Omaha Fund Management Company is liable and shall pay to the Claimants Annie M. McCants and Annie M. Morrison the sum of \$7,105.72 in damages.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants Annie M. McCants and Annie M. Morrison shall be retained by the NASD, Inc.
4. Respondent Mutual of Omaha Fund Management Company is liable and shall pay to the Claimants the sum of \$150.00 as reimbursement.

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AFFIRMATION

I, **H. VICTOR SCHWIMMER, ESQ.**, 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.

A handwritten signature in cursive script, appearing to read "H. Victor Schwimmer", is written over a horizontal line.

Signature of Arbitrator

DATE OF DECISION: January 5, 1993