

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

William and Kathleen Dotsikas

92-03733

Name of Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.
Stephen J. Smola

REPRESENTATION

For Claimants William and Kathleen Dotsikas ("Claimants"): George L. McGaughey, Esq., of McDonald Hopkins et al.

For Respondents Merrill Lynch Pierce Fenner & Smith, Inc. ("MLPFS") and Stephen J. Smola ("Smola"): Michael E. Olney, Esq., of MLPFS.

CASE INFORMATION

Statement of Claim filed: November 2, 1992.

Claimants' Submission Agreement signed on: October 22, 1992.

Joint Statement of Answer filed by Respondents on: January 29, 1993.

Respondent MLPFS's Submission Agreement signed on: January 28, 1993.

Respondent Smola's Submission Agreement signed on: December 28, 1992.

HEARING INFORMATION

Pre-Hearing Conference: June 9, 1993/1 arbitrator/1 session

Hearing Dates/Sessions: July 1, 1993/3 arbitrators/2 sessions
July 2, 1993/3 arbitrators/3 sessions

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Hearing Location: NASD/Cleveland, OH.

CASE SUMMARY

Claimants alleged they became clients of Respondents in 1989 when Smola solicited William Dotsikas ("Dotsikas") as a customer. Dotsikas alleged he explained his financial objectives to Smola which included safe investments because he was selling a portion of his business and his income would not be steady. Dotsikas further alleged he told Smola he was considering investing in Certificates of Deposit; however, Smola advised against that and told him he would invest Dotsikas' money safely and earn Dotsikas twelve (12%) percent income. Dotsikas alleged he instructed Smola that he was not to lose more than five (5%) percent of his money and that Smola agreed to handle the account in accordance with those instructions.

Claimants alleged that during the period November 1989 through December 1990, Smola selected unsuitable stocks and traded excessively in the accounts, contrary to Dotsikas' objectives, which resulted in financial losses to Claimants through commissions, loss of principal and margin interest costs. Claimants alleged Smola's "in and out trading" was for the purpose of generating commissions and was not authorized by Dotsikas.

Claimants alleged Smola intentionally defrauded and deceived Claimants, which enabled him to generate monetary gain for himself and MLPFS and that he churned the accounts for the benefit of himself and MLPFS. Claimants alleged Respondents owed a fiduciary duty to Claimants and that duty was breached. Finally, Claimants alleged Smola breached his express and implied promises to Claimant.

Respondents alleged Claimants business relationship began with them during a phone call during which Dotsikas suggested he had several hundred thousand dollars available as investment capital and inquired as to what level of return could be obtained for that amount invested. Respondents asserted Smola indicated investments paying seven to eight (7-8%) percent; however, Dotsikas indicated this was not satisfactory as he had no interest in tying up money for more than a year at a time. Respondents alleged Smola suggested investments paying in the area of nine (9%) percent, but that if a commission were paid and the holding period relatively short, it would not make sense; whereby, Dotsikas stated he would only be interested in investments which offered the potential for "double digit returns." Smola contended he cautioned Dotsikas that every increment of additional return potential carried with it a greater probability of loss of capital. Smola alleged that at no time did Dotsikas tell him that he, Dotsikas, "required safe investment"; however, Dotsikas did indicate it was possible he might sell his business and support himself through other ventures.

Smola denied he promised any return level, let alone twelve (12%) percent; nor was he instructed to limit losses to five (5%) percent of Claimants' money. Respondents maintained

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they agreed to identify and recommend securities which offered the potential for double digit total return through a combination of growth and/or dividends.

Respondents alleged that Claimants' investment objectives, as expressed to Smola, were to make maximum gains in the shortest possible time. Respondents further maintained Claimants opened four accounts over a period of ten (10) months and for them to allege the accounts were churned while Claimants continued to open additional accounts with the same broker, takes poetic license with the term.

Respondents alleged Dotsikas signed a Standard Option Agreement in October 1989; told Respondents he had two other brokerage accounts; and had been investing in stocks and bonds for five (5) years and in equity options for four (4) years. Respondents contended this information was confirmed when a copy of the signed, completed agreement was mailed to Dotsikas with a cover letter inviting corrections. Respondents alleged Claimants' account was reviewed in accordance with firm policy and on several occasions Claimants received letters acknowledging the activity in their accounts and inviting comments or questions.

Respondents alleged that on numerous occasions Smola visited Dotsikas' office to pick up monies to pay for trades and if the trades were unauthorized, Respondents questioned why Dotsikas continued to make deposits.

Respondents alleged Dotsikas also told Smola he owned a motel and Respondents maintained that some of the money withdrawn from Claimants' securities accounts was used in connection with expenses for the motel. Finally, Respondents alleged that in August 1992, Kathleen Dotsikas filed a Complaint for Legal Separation with Restraining Order against Dotsikas which postdates the trading herein at issue, yet makes no reference to Respondents despite allegations that Dotsikas had secreted assets to deprive her of her share of marital property.

RELIEF REQUESTED

Claimants requested: compensatory damages in the amount of \$116,925.00 (including margin interest); punitive damages in the amount of \$100,000.00; and attorneys' fees and costs. At the hearing, Claimants amended their request for compensatory damages to \$168,547.00.

Respondents requested: the claim be denied in all respects; attorneys' fees; costs and expenses.

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.

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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. Respondents are hereby liable, jointly and severally, and shall pay to Claimants the sum of \$70,786.59;
2. Claimants claim for punitive damages is dismissed;
3. All other claims are dismissed;
4. Each party shall bear its own costs, including attorneys' fees, except that Respondents are hereby liable, jointly and severally, and shall reimburse to Claimants the \$750.00 hearing session deposit previously paid to the NASD.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the \$200.00 non-refundable filing fee previously deposited by Claimants and the following Forum Fees are assessed.

1 pre-hearing conference session = \$300.00 = net \$300.00 due.
5 sessions X \$750.00 = \$3,750.00 minus hearing session deposit of \$750.00 = net \$3,000.00 due.

Forum fees Assessed Against:

1. Respondents are hereby liable, jointly and severally, and shall pay to the NASD the sum of \$3,300.00.

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

Arbitrator Signature


Carole O. Heyward/Public Arbitrator

Date of Decision: August 10, 1993

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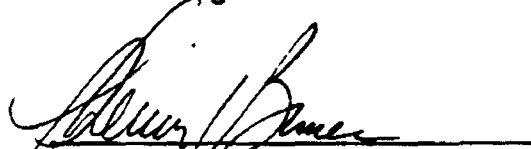
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Sherry L. Bruce/Industry Arbitrator

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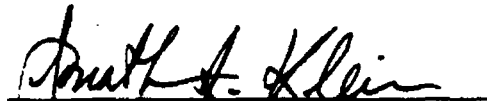
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Arbitrator Signature



Jonathan I. Klein/Public Arbitrator

Date of Decision: August 10, 1993