

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration BetweenName of Claimant

Pattie S. Tomlin

92-04050

Name of RespondentCharles M. Clifton

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on December 1, 1992, Claimant Pattie S. Tomlin, who appeared Pro Se, alleged that she first contacted Respondent Charles Clifton on July 20, 1988 when he was associated with Edward D. Jones & Co. as an Investment Representative, at which time, Respondent put most of her savings into a GNMA fund due October 15, 2016 whereby Respondent promised Claimant a total return of her principal. Claimant further alleged that Respondent gained her trust by sharing his religious experience and when he invited her to his church, she went once to a service, whereby Respondent confirmed her faith in him. Claimant contended that on September 6, 1989 Respondent contacted her whereby he convinced her that she would make more money if she switched her IRA account to one he picked out. Claimant further contended that the share price went way down plus the bookkeeping showed much less than it should have whereby Claimant had to make many calls and complaints to get it fixed right. Claimant asserted that a few months later she was notified that Respondent was no longer employed with Edward D. Jones & Co., at which time, Respondent had set up to keep her accounts with him. Claimant further asserted that on September 20, 1990 Respondent advised her that her income would be much higher if she would sell out her GNMA and Ryan MTG funds in order to buy four different ones, at which time, Claimant was not given a prospectus on any at the time whereby she still believed that Respondent would not lead her wrong, thus, she went along with it. Claimant argued that from September 27, 1990; the settlement date, to October 5, 1990; the date of her next statement from Raymond James & Associates, Inc., her Koger shares purchased on the NYSE had dropped from \$14 1/4 per share to \$7.875, thus, the dividend was dropped and it kept going down whereby it finally went into bankruptcy, at which time, Claimant managed to salvage \$2,427.00 on June 11, 1991 by breaking off from Respondent and returning her account

to Edward D. Jones & Co. Claimant further argued that Respondent took advantage of her age and ignorance in matters of money matters in order to pad his own pockets with commissions, thus, Respondent should be held liable for her losses.

Respondent Charles M. Clifton, who appeared Pro Se, maintained that Claimant Pattie S. Tomlin first approached him in July, 1988 expressing a need to increase her income over the rate she was receiving at the bank, at which time, Respondent recommended Graduated Payment Mortgage Pool 908502X which offered the potential of rising income in addition to the usual benefits of monthly income and safety of principal. Respondent further maintained that in the course of Claimant owning this investment, it was found that the process of accounting for the return of principal due to prepayment and the accretion of principal due to the graduated payment feature was more of a burden than Claimant was comfortable with. Respondent contended that during the course of these contacts, the relationship developed to the point that Claimant attended a church service with his family and subsequently, in September 1989 Claimant asked Respondent for a suggestion for her IRA, which was paying to little, at which time, Respondent discussed the advantages of tax-deferred growth and the distinctions between income and growth. Respondent further contended that Claimant elected to compromise the two objectives in a convertible securities fund whereby this investment was plagued with accounting problems which originated at the fund's transfer agent, at which time, we decided to exchange within the Federated Fund Family to the Liberty Utility Fund, at no cost to Claimant, whereby Respondent is confident that this investment has been proven over time, and if Claimant remained with this fund the account would have grown from \$7,000.00 to \$8,600.00 with a current yield exceeding 5%. Respondent asserted that in October 1989 he decided to leave Edward D. Jones & Co. and opened an office with Investment Management & Research, Inc. which is affiliated with Raymond James & Associates, Inc., at which time, Claimant chose to transfer her account with him and although he continued to work on Claimant's existing investment, there were no further investments until September, 1990. Respondent further asserted that on September 20, 1990 he presented Claimant with four investments which together generated a cash flow of \$4,480.00 in contrast to the cash flow of \$3,564.00 for her GNMA and CMO at which time, Respondent did not seek the highest yield available, but diversified by asset class, management and objective; which plan was discussed and accepted in it's entirety by Claimant. Respondent argued that the Koger Properties purchased by Claimant had been recommended by Raymond James & Associates, Inc. research department and had exhibited a very stable price history up until that time whereby the decline was not expected in the general investment community and Respondent had no prior warning. Respondent further argued that he served Claimant in a professional and courteous manner whereby he employed diversification to meet her objectives with a risk level she was comfortable with and that Claimant's total return on her portfolio was positive.

RELIEF REQUESTED

Claimant Pattie S. Tomlin requested \$8,289.98 in actual damages.

Respondent Charles Clifton requested the claim be denied.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Chandler Bridges, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on November 25, 1992 and by the Respondent on February 3, 1993.

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. The claim of Claimant Pattie S. Tomlin against Charles Clifton is dismissed.
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 Claimant Pattie S. Tomlin shall be retained by the NASD, Inc.

AFFIRMATION

I, CHANDLER BRIDGES, 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.



Signature of Arbitrator

DATE OF DECISION: June 17, 1993