

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Edwin Rosen & Betty Rosen

93-00214

Name of Respondents

Great Western Financial Securities
Bryan Powell

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 21, 1992, Claimants Edwin & Betty Rosen, who appeared Pro Se, alleged in January, 1992, they were in possession of two maturing Certificates of Deposit ("CD") at America Savings Bank, the value of which totaled \$45,000.00 upon maturity, at which time, Claimants approached Respondent Great Western Financial Securities and were introduced to Respondent Bryan Powell, who portrayed himself as a very knowledgeable investment counselor. Claimants further alleged that they made Respondent Bryan Powell aware of their investment objectives of conservative investments with no market risk and some income, at least commensurate with prevailing CD rates, at which time, Respondent Bryan Powell recommended they invest the proceeds of their maturing CD's in two different mutual funds; the Great Western National Municipal Bond Fund and the Kemper Short-Term Global Fund. Claimants contended that on more than one occasion they explained that they did not want to risk their capital as their age precluded such risks and Respondent Bryan Powell consistently portrayed these investments as very safe and secure, whereby Respondent Bryan Powell further informed Claimants that the value of their investments would "only go up or down a few pennies". Claimants further contended that they questioned Respondent Bryan Powell as to the costs included in purchasing the mutual funds, and Respondent Bryan Powell claimed there were no costs associated with the purchase, in addition, Respondent Bryan Powell also recommended that Claimants reinvest their monthly dividend from the respective investments without informing them of any sales or commission charges associated with this action. Claimants asserted that in July, 1992 they questioned Respondent Bryan Powell regarding the decreasing values of their investments, at which time, Respondent Bryan Powell acknowledged the decline and recommended that they hold their

investments for at least one year. Claimants further asserted that in December, 1992 they once again contacted Respondent Bryan Powell regarding the loss of principal, and were informed he was no longer with Respondent Great Western Financial Securities whereby they were introduced to another financial consultant, at which time, the new financial consultant recommended that Claimants liquidate their Kemper Short-Term Global Fund and transfer said funds to the Sierra National Municipal Bond Fund. Claimants further alleged that they were apprehensive about making any further investments with Respondent Great Western Financial Securities and instead opted to liquidate both of their investments. Claimants argued that Respondents committed numerous securities law violations and are liable for their financial loss.

Respondents Great Western Financial Securities and Bryan Powell, by and through their Vice President, Laura J. Hartt, maintained that Claimants Edwin & Betty Rosen expressly ordered, approved, authorized, participated and ratified the acts and transactions complained of and upon which recovery is sought and therefore Claimants are precluded from recovery. Respondents further maintained that the risks associated with the investments undertaken by Claimants were fully explained by Respondent Bryan Powell, and Claimants knowingly, willingly and voluntarily assumed the risks associated with those investments. Respondents contended that prior to Claimants signing the Explanation of Your Investment Form, Respondent Bryan Powell discussed and documented in the margin of the form the exact commission charges for the funds recommended. Respondents further contended that Respondent Bryan Powell did not explain to Claimants that the Kemper or Sierra Mutual funds incurred commission charges for reinvesting dividends, since neither fund families have these charges. Respondents asserted that Claimants' objectives in making these investments was to increase the yield of their investments, therefore, both investments were fully suitable. Respondents further asserted that Claimants were told on several occasions by Respondent Bryan Powell and other representatives that investments are long-term and should not be liquidated prematurely. Respondents further alleged that they had no motivation to recommend that Claimants invest in a fund that is unsuitable for them and there were numerous other investments that would have paid Respondent Bryan Powell higher commissions. Respondents further asserted that Respondent Bryan Powell's recommendation was based solely upon Claimants' representations of their investment goals and Respondents at all times acted in good faith.

RELIEF REQUESTED

Claimants Edwin & Betty Rosen requested \$4,795.95 in actual damages together with cost of arbitration and expenses including reasonable consulting fees plus any other cost deemed reasonable and just.

Respondents Great Western Financial Securities and Bryan Powell requested the claim be dismissed and they be awarded costs of arbitration, costs of investigation and attorney's fees.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, William A. Fleck, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on January 15, 1992 and by the Respondents on March 29, 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 Claimants Edwin & Betty Rosen against Respondents Great Western Financial Securities and Bryan Powell is dismissed.
2. The parties shall bear their respective costs, including attorney's fees.
3. The \$125.00 filing fee previously derosited with the National Association of Securities Dealers, Inc. by the Claimants Edwin & Betty Rosen shall be retained by the NASD, Inc.

AFFIRMATION

I, WILLIAM A. FLECK, 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: July 12, 1993