

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Heritage Bank

93-00836

Name of Respondents

Andrew Bayliss
Pioneer Portfolio Corp.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 5, 1993, Claimant Heritage Bank, by and through their President, Brad Walterskirchen, alleged that on February 11, 1992 Respondent Andrew Bayliss, a broker of Pioneer Services, Inc. solicited for sale an insured jumbo certificate of deposit ("CD") to Claimant, a Federal Savings Bank at which time, Respondent Andrew Bayliss advised Vice President, Maryann Keele that the investment into the jumbo CD issued by Philadelphia Savings Fund Society, Philadelphia, PA was structured as a deeply discounted instrument whereby Claimant, by investing \$87,847.00 at a 6% per annum return, would receive \$100,000.00 at maturity date of April 22, 1994. Claimant further alleged that based upon the information presented and based upon the fact that the instrument met Claimant's Investment Policy, Claimant agreed to purchase the instrument as presented whereby the transaction was settled on February 13, 1992 and later Claimant received confirmation receipts from Pioneer Services, Inc. as well as Simmons First National Bank of Little Rock, Arkansas, who acted as a safekeeping agent. Claimant contended that the confirmation receipts from both Pioneer Services, Inc. and the safekeeping agent reflect the Claimant's investment in a jumbo CD at a discounted price of 87.847 under the terms and conditions previously described. Claimant further contended that on January 19, 1992 they were advised by Respondent Andrew Bayliss that the Philadelphia Savings Fund Society had failed and that Mellon Bank had acquired the deposits, at which time, Claimant received a wire from Simmons First National Bank in the amount of \$85,781.70 less transfer fee whereby the amount received by wire was \$2,065.30 less than the amount originally invested in February 13, 1993 plus any interest accrued from that date. Claimant asserted that they pursued inquiries as to how the amount wired was computed, and based on Respondent Andrew Bayliss' explanation, the

jumbo CD was not purchased at a discount as represented and confirmed, but rather purchased with a premium whereby as a result when Mellon Bank acquired the deposit on December 31, 1992 prior to maturity of the instrument, the premium was lost and the CD took a loss. Claimant further asserted that on January 29, 1993, they forwarded a letter to Respondent Andrew Bayliss with a copy to a Dennis Patrikios, an officer of Pioneer Services, Inc. indicating that they were misled and deceived into investing into an instrument they would not otherwise have invested in had the proper information been disclosed whereby Claimant demanded the amount they were shorted at which time, no written response was received. Claimant further asserted an Amended Statement of Claim to include Respondent Pioneer Portfolio Corp. as a Respondent to their Claim in that Pioneer Portfolio, Inc. is a subsidiary of Respondent Pioneer Portfolio Corp. and should be held liable.

Respondent Pioneer Portfolio Corp. by and through Dennis Patrikios, maintained that Pioneer Services, a non-NASD company is not a subsidiary of Respondent Pioneer Portfolio Corp. and Pioneer Services is a stand along company that in any legal sense cannot be considered a subsidiary of Respondent Pioneer Portfolio Corp., therefore, Respondent Pioneer Portfolio Corp. claims that under the NASD rules and regulations, they should not be a party to this claim.

Respondent Andrew Bayliss, who appeared Pro Se, maintained that as an employee of Pioneer Services, Inc., he quotes certificate of deposit ("CD") rates to institutional investors whereby these certificates are quoted almost exactly like Corporate, Municipal and Government Bonds. Respondent Andrew Bayliss further maintained that CD's trade either one of three ways: at par, at a discount or at a premium whereby most certificates of deposit are coupon issues and to discern whether or not the issue is trading at par, at premium or at a discount is very simple and all Respondent Andrew Bayliss has to do is see whether the dollar price is at, above or below 100. Respondent Andrew Bayliss contended that Zero-coupon issues, as opposed to coupon issues, trade below a dollar price of 100 or at a discount. Respondent Andrew Bayliss contended that since the issue in question was sold at a discount, there was no way he could have quoted a premium since that information is not available and that built in to the selling price was a premium which was negated by the FDIC's new regulatory stance towards the "too big to fail" concept concerning undercapitalized banks.

Respondent Andrew Bayliss asserted a Motion to Decline Jurisdiction since his firm, Pioneer Services, Inc. is not a member of the NASD and since the item in question is exempt from any and all Federal Registration requirements, that under the NASD Code of Arbitration Procedure, the subject matter of the dispute is not properly cognizable in the NASD arbitration forum.

RELIEF REQUESTED

Claimant Heritage Bank requested \$6,863.79 in actual damages.

Respondent Pioneer Portfolio Corp. requested that the claim be denied.

Respondent Andrew Bayliss requested the claim be denied.

AWARD

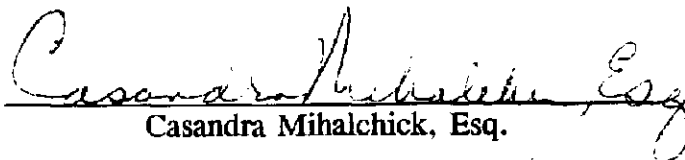
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Casandra Mihalchick, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on March 2, 1993, by the Respondent Pioneer Portfolio Corp. on August 5, 1993 and by the Respondent Andrew Bayliss on August 4, 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. Respondent Andrew Bayliss' Motion to Decline Jurisdiction is denied.
2. Respondents Pioneer Portfolio Corp. and Andrew Bayliss are jointly and severally liable and shall pay to the Claimant Heritage Bank the sum of \$6,863.79 in damages.
3. The parties shall bear their respective costs.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Heritage Bank shall be retained by the NASD, Inc. Respondents Pioneer Portfolio Corp. and Andrew Bayliss are jointly and severally liable and shall pay to the Claimant the sum of \$150.00, as reimbursement.

AFFIRMATION

I, CASANDRA MIHALCHICK, 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.


Casandra Mihalchick, Esq.

DATE OF DECISION: October 6, 1993