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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Nancy C. Johnson

93-00874

Name of Respondents

Merrill Lynch Pierce Fenner & Smith Inc
Joseph J. Paskoski

REPRESENTATION

For Claimant, Nancy C. Johnson ("Johnson"): Richard W. Epstein, Esq. of Greenspoon Marder Hirschfeld & Fafkin, Fort Lauderdale, Florida.

For Respondents, Merrill Lynch Pierce Fenner & Smith ("ML") and Joseph J. Paskoski ("Paskoski"): Arthur H. Sobel, of ML, New York, NY.

CASE INFORMATION

Statement of Claim filed: March 5, 1993. Claimant's Submission Agreement signed: March 4, 1993.

Joint Statement of Answer filed: April 23, 1993. Respondents' Submission Agreements signed: August 16, 1994 by Paskoski and by Arthur Sobel on behalf of ML.

HEARING INFORMATION

On August 16, and 17 and November 16 and 17, 1994, hearings lasting 8 sessions were conducted in Fort Lauderdale Florida.

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CASE SUMMARY

Claimant alleged that Gordon Johnson was a successful advertising executive who, prior to his death on September 19, 1990, was a longtime customer of Paskoski, both at ML and Paskoski's prior firm, PaineWebber, Inc; that the Claimant was Mr. Johnson's wife; that, within days after Mr. Johnson's death, two annuity contracts, each in the original amount of \$700,000.00, held in Mr. Johnson's Rollover Individual Retirement Account at ML, were liquidated, and the entire proceeds of \$1,490,690.00 were deposited in a bank account set up for Claimant by Paskoski; that the money remained there until mid-February, 1991, at which time \$1,000,000.00 of it was reinvested into an annuity nearly identical to the two annuities Gordon Johnson originally purchased; that in the interim, Claimant incurred an income tax liability of \$405,425.00; that Paskoski, while in the employ of ML, and without first consulting with or advising Claimant, decided to liquidate the annuities and procured Claimant's signature on the necessary documentation which Paskoski's assistant, Karen Wardlaw, prepared; that, thereafter, Paskoski said and did nothing to alert Claimant to the impending and entirely avoidable income tax liability until he had left ML and associated with a new firm; and, that the subsequent purchase of the annuity by Claimant, with the remaining funds generated a commission of \$52,500.00 to Paskoski and his new firm.

Respondents denied all allegations of wrongdoing and alleged that Claimant was aware of the consequences of cashing in her annuities and made the decision to do so, to pay the tax and to purchase a split funded annuity, giving her a tax advantaged monthly income and preserving the \$1,000,000.00 principal for her daughter at the end of the ten year annuity term.

RELIEF REQUESTED

The Claimant seeks damages in the amount necessary to restore her to the position she would have been in had she done nothing with Gordon Johnson's annuities and IRA: \$1,167,348.00 plus a gross-up for income taxes due on such an award.

Respondents requested dismissal and costs.

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OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies and to receive conformed copies of the Award while the originals remain of file with the NASD.

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 found not liable and all claims against them are hereby dismissed.
2. Claimant's requests for punitive damages, attorney's fees and costs are denied.

OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including attorneys' fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$8,000.00 (\$1,000.00 x 8 sessions).

1. Claimant is hereby assessed \$4,000.00 for which the NASD shall retain the \$1,000.00 previously deposited in partial satisfaction thereof, leaving a balance due of \$3,000.00 payable to the National Association of Securities Dealers, Inc.
2. Claimant is hereby assessed the further amount of \$125.00 in administrative costs for noncompliance with the requirements of the Code in regard to discovery, as previously directed by the chairperson, payable to the National Association of Securities Dealers, Inc.
3. The NASD shall retain the \$1,000.00 postponement fee previously assessed by this Panel along with the non-refundable filing fee of \$250.00 previously paid by the Claimant.

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4. Respondents are hereby assessed \$4,000.00, jointly and severally, payable to the National Association of Securities Dealers, Inc.

5. Respondents are hereby assessed the further amount of \$125.00, jointly and severally, in administrative costs for noncompliance with the requirements of the Code in regard to discovery, as previously directed by the chairperson, payable to the National Association of Securities Dealers, Inc.

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

Concurring Arbitrators' Signatures

15/
Lewis J. Levey, Esq.

Public

15/
James R. South

Industry

15/
George S. Webster, Esq.

Public

Date of Decision: 11/6/95