

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants:

Herman L. and Lilian A. Meckler

93-02247

Name of Respondents:

James Cashman
Mitchell Randolph Kerschner
Gabriele, Hueglin & Cashman Inc.

REPRESENTATION

Claimants, Herman L. Meckler and Lilian A. Meckler ("the Mecklers") were pro se.

For Respondents James Cashman ("Cashman"), Mitchell R. Kerschner ("Kerschner") and Gabriele, Hueglin & Cashman, Inc. ("Gabriele"): Patrick J. Howley, Esq., of Tucker Anthony Incorporated.

CASE INFORMATION

Statement of Claim filed: 6/7/93. Claimant's Submission Agreement signed on: 6/2/93.

Joint Statement of Answer filed by Respondents, on: 9/29/93. Respondent, Cashman's Submission Agreement signed on: 10/19/93. Respondent, Kerschner's Submission Agreement signed on: 10/19/93. Respondent, Gabriele's Submission Agreement signed on: 10/19/93 by Patrick J. Howley as Associate General Counsel of Gabriele, Hueglin & Cashman Inc./Tucker Anthony, Inc.

HEARING INFORMATION

A Hearing lasting two (2) Sessions was held on February 11, 1994 in Tampa, Fl.

CASE SUMMARY

Claimants, alleged that Mr. Meckler, 80 years old and inexperienced in the securities industry, provided \$360,000 to the Respondents on 2/4/93 to purchase John Hancock Funds; Respondents proposed no other investments other than John Hancock sponsored funds and invested the \$360,000 equally in four Hancock funds; Claimant complains of self serving transactions of questionable choice which resulted in poor performance and a loss to the Claimants.

Respondents, alleged that Claimants' cause of action is unsupported by facts and Claimant failed to state a cause of action. Respondents set forth the affirmative defenses of: failure to state a cause of action; ratification; estoppel; assumption of risk; statute of limitations; lack of reliance; and failure to mitigate damages.

RELIEF REQUESTED

Claimants requested: they be reimbursed for the loss of \$22,391 suffered as a result of their investment with Respondent.

Respondents requested: dismissal of all claims and that all costs be assessed against the Claimants.

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 original(s) remain on file with the NASD.

The panel granted Respondents motion to dismiss James Cashman.

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, therefore, the claims against them are hereby dismissed.

OTHER COSTS

Each party is to bear their own costs and expenses other than Forum Fees below.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have assessed forum fees in the amount of \$800 (2 sessions x \$400 per session).

1. Claimants are hereby assessed \$400, jointly and severally. The National Association of Securities Dealers, Inc. shall retain the hearing session deposit of \$400.00 paid by Claimants in full satisfaction of this amount.
2. Respondent, Gabriele is hereby assessed \$400 payable to the National Association of Securities Dealers, Inc.
3. The National Association of Securities Dealers, Inc. shall retain the \$100 non refundable filing fee paid by Claimants.

Concurring Arbitrators' Signatures
Name

Public/Industry

/s/
Thomas E. Greef, Chairman

Public

/s/
Gordon E. Hippner, Panelist

Industry

/s/
Michael N. Gonantos, Panelist

Public

Arbitrator, Michael Gonatos dissented as to paragraph (2) of the Forum Fees Section of this decision and otherwise concurred in the Award.

Date of Decision: 2-24-94