

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Gloria Kates

vs.

Case #
93-02531

Name of Respondent

Robert Kears

REPRESENTATION

Claimant, Gloria Kates ("Claimant") who resides in Staten Island, New York, represented herself at the hearing.

Respondent, Robert Kears ("Respondent") who resides in New Jersey, represented himself at the hearing.

CASE INFORMATION

Statement of Claim was filed on November 3, 1993.

Claimant's Submission Agreement was signed on February 9, 1993.

Statement of Answer was filed by Respondent on January 6, 1994.

Respondent's Submission Agreement was signed on January 6, 1994.

HEARING INFORMATION

Hearing Dates/Sessions: October 19, 1994 - 1 session
 November 11, 1994 - 1 session
 January 4, 1995 - 1 session

Hearing Location: NASD offices located in New York, New York.

CASE SUMMARY

Claimant alleges that Respondent pressured her to sell a portion of her investment in MFSUS Government Trust and invest \$28,000.00 in A&A Foods. Claimant also alleges that she did this after Respondent told her that she would not lose any interest and principal plus she would recoup the \$885 penalty for selling MFS.

Claimant further alleges that Respondent was aware that she needed the income she received from this investment since her monthly Social Security benefit was \$314 and her monthly disability benefit was \$198. Claimant contends that Respondent told her that she would make enough money to "buy a MercedesBenz". Claimant also contends that Respondent represented that she would be in and out of this investment within one or two weeks and that he would not charge her commissions since she would pay a penalty. Claimant further contends that she paid more in commissions than in penalty.

Claimant states that since her investment, Respondent's attitude towards her changed when she called to inquire about her investment and he failed and refused to sell the shares when she instructed.

Respondent denies the allegations of wrongdoing and alleges that although he recommended that Claimant purchase shares in A&A Foods, Claimant previously owned shares of this stock. Respondent also states that Claimant was satisfied with the way he serviced her account and moved her account from First Investors Corp when he left that firm. Respondent also states that Claimant continually complained about the decline in the income she was receiving from the Massachusetts Financial Service Lifetime Government Income Plus Trust and that it was in response to her complaints that he recommended that she purchase 5,000 shares of A&A Foods at \$5.75 per share. Respondent states that he explained that this was a conservatively run food company and disclosed the downside risk and that it might take as much as three years for substantial appreciation in the stock.

Respondent maintains that when Claimant instructed him to sell all of her stock positions, he did so but when he tried to explain to her that he may not be able to sell all of her A&A Food shares, she hung up the phone.

RELIEF REQUESTED

Claimant requests an award of \$28,000.00.

Respondent requests that the claim be denied.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies and agreed to receive a conformed copy of the Award while the original remains on file with the NASD.

At the October 19, 1994 hearing all parties and arbitrators except the Chairperson of the panel, who participated by telephone, appeared at the hearing. Respondent requested a postponement on the grounds that his attorney withdrew and he was unable to proceed with the hearing and produced a letter from his doctor. The panel after hearing both parties granted the postponement and rescheduled the hearing to November 11, 1994. On November 11, 1994, Respondent appeared at the hearing and requested another postponement on the grounds that he was not afforded sufficient time to obtain an attorney because he was ill and the attorney whom he tried to retain, declined to represent him because he previously represented the Claimant. After hearing both parties, the panel granted another adjournment and rescheduled this matter to January 4, 1995. Respondent was assessed and paid \$400.00 for each of the postponements.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent Kearse is hereby liable and shall pay Claimant damages in the amount of **SEVENTEEN THOUSAND FIVE HUNDRED DOLLARS AND ZERO CENTS (\$17,500.00)**.
- 2) Respondent shall reimburse Claimant \$500.00 in filing fees as stated in the Forum Fees Section of this decision.
- 3) All other claims for relief are denied.

FORUM FEES

Pursuant to Section 43(c) of the *Code of Arbitration Procedure*, the following Forum Fees are assessed against Respondent.

Non-refundable Filing Fee - \$100.00

Hearing Session Fees - \$1,200.00 (3 sessions x \$400.00 per session)

Total Fees = \$1,300.00

- 1) Claimant previously paid \$500.00 and is entitled to a refund.

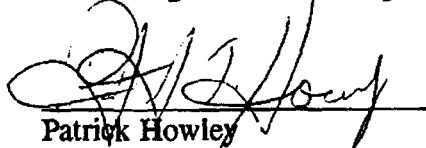
- 2) Respondent shall satisfy the fees assessed by reimbursing Claimant \$500.00 and by remitting the balance, \$800.00 to the NASD.
- 3) Respondent is further assessed and has paid the \$800.00 referred to in the Other issues Considered and Decided portion of this decision.

Fees due to the NASD shall be made payable to the National Association of Securities Dealers, Inc.

ARBITRATION PANEL

Stephen Goodman, Esq.	-	Public Chairperson
Craig Scott Bartlett, Jr.	-	Public Panelist
Patrick Howley, Esq.	-	Industry Panelist

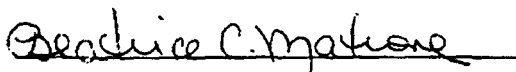
Concurring Arbitrator's Signature


Patrick Howley

Date of Decision: February 21, 1995

State of NEW YORK s.s.:
County of NEW YORK

On this day of January, 1995, before me personally appeared Patrick Howley known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that the executed the same.



BEATRICE C. MATRONE
Notary Public, State of New York
No. 01MA5021045
Qualified in New York County
Commission Expires December 6, 1995

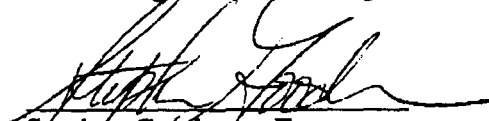
- 2) Respondent shall satisfy the fees assessed by reimbursing Claimant \$500.00 and by remitting the balance, \$800.00 to the NASD.
- 3) Respondent is further assessed and has paid the \$800.00 referred to in the Other issues Considered and Decided portion of this decision.

Fees due to the NASD shall be made payable to the National Association of Securities Dealers, Inc.

ARBITRATION PANEL

Stephen Goodman, Esq.	-	Public Chairperson
Craig Scott Bartlett, Jr.	-	Public Panelist
Patrick Howley, Esq.	-	Industry Panelist

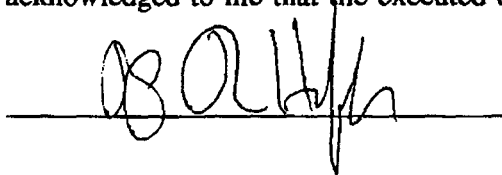
Concurring Arbitrator's Signature


Stephen Goodman, Esq.

Date of Decision: February 21, 1995

State of New York s.s.:
County of new York

On this 13th day of February, 1995, before me personally appeared Stephen Goodman known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that the executed the same.



PHILIP R. HOFFMAN
Notary Public, State of New York
No. 02HO-4710677
Qualified in Westchester County
Commission Expires June 30, 1998

- 2) Respondent shall satisfy the fees assessed by reimbursing Claimant \$500.00 and by remitting the balance, \$800.00 to the NASD.
- 3) Respondent is further assessed and has paid the \$800.00 referred to in the Other issues Considered and Decided portion of this decision.

Fees due to the NASD shall be made payable to the National Association of Securities Dealers, Inc.

ARBITRATION PANEL

Stephen Goodman, Esq.	-	Public Chairperson
Craig Scott Bartlett, Jr.	-	Public Panelist
Patrick Howley, Esq.	-	Industry Panelist

Concurring Arbitrator's Signature

Craig S. Bartlett, Jr.
Craig Scott Bartlett, Jr.

Date of Decision: February 21, 1995

State of New York s.s.:
County of New York

On this 31st day of January, 1995, before me personally appeared Craig Scott Bartlett, Jr. known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that the executed the same.

Lisa M. Sofio

LISA M. SOFIO
Notary Public, State of New York
No. 01506028080
Qualified in Richmond County
Certificate filed in New York County
Commission Expires March 21, 1996 476