

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Mary Ann Spollito

93-02697

Name of Respondent

Barbara Douglas

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on July 12, 1993, Claimant Mary Ann Spollito, who appeared Pro Se, alleged that on November 13, 1992 she went to the office of Respondent Barbara Douglas at Dean Witter Reynolds, Inc. because Claimant had previously attended a seminar at Suffolk County Community College given by Respondent on financial planning whereby she had informed them that they could have a free consultation on managing money at Respondent's office. Claimant further alleged that after discussing her financial situation, Claimant told Respondent that she had a five year contract coming due with Sun Life Annuity and the options they offered her. Claimant contended that Respondent called Sun Life, as Claimant sat in her office, to find out what principal was left and what interest had accrued. Claimant further contended that the figure was \$20,000.00 in interest at which time, Respondent told her to take the interest out over two years and pay the taxes on it, whereby Respondent said she could get Claimant a better rate of interest than what Sun Life offered. Claimant asserted that Respondent told her to write to Sun Life requesting \$11,000.00 whereby Respondent never told her that she would pay a penalty for doing this. Claimant further asserted that in March 1993, when she went to her accountant to have her taxes done, he informed her that because she was not 59 1/2 years old, she would pay a 10% penalty at which time, Claimant spoke to the manager at Dean Witter Reynolds, Inc., Kenneth Peters, regarding this matter and wrote to the Senior Compliance Officer. Claimant further asserted that Dean Witter's reply was: "Dean Witter account executives do not give tax advise", whereby Mr. Peters informed her, "it was my word against Ms. Douglas". Claimant further alleged that she feels that since she had placed her trust in Respondent's competence as a certified financial planner, Respondent was obligated to notify Claimant of the risks and consequences, thus, Respondent should be held liable.

Respondent Barbara Douglas, by and through her counsel William B. Peterson, Esq. of Dean Witter Reynolds, Inc., maintained that Claimant Mary Ann Spollito, after attending a seminar given by Respondent Barbara Douglas, came to Respondent's office in November, 1992 for a free consultation offered on money management. Respondent further maintained that Claimant and Respondent discussed Claimant's financial situation, including her need for additional income, at which time, Claimant informed Respondent that she owned a Sun Life Annuity due to mature at the end of November, 1992. Respondent contended that during their discussion, Respondent suggested several options for consideration as solutions to Claimant's Financial difficulties, including taking a part-time job for additional income; transferring to a different annuity with a more favorable return; determining principal amount remaining in the annuity and what interest had accrued thereon whereby once this was determined, Claimant might want to withdraw the interest and reinvest it; however, at no time did Respondent tell Claimant to withdraw interest from her annuity. Respondent further contended that all options suggested were to be reviewed by Claimant's accountant and her insurance agent, with Claimant's decision being based upon such review, which apparently was done since Claimant provided Respondent with a copy of a hand-written note from her insurance agent advising of penalty for withdrawal of interest. Respondent asserted that she is neither an account or a tax advisor and has never seen Claimant's annuity contract therefore, she was unfamiliar with the terms and conditions thereof whereby Respondent has no basis for giving any advice regarding taxes; and pursuant to the policy of Dean Witter Reynolds, Inc., Respondent was expressly forbidden to give tax advice to clients, at which time Respondent advised Claimant to seek the advice of her accountant and insurance agent before making any decisions.

#### **RELIEF REQUESTED**

Claimant Mary Ann Spollito requested the sum of \$1,100.00 in actual damages.

Respondent Barbara Douglas requested the claim be denied and that the cost of this proceeding be assessed against Claimant.

#### **AWARD**


Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Jerome Goodgal, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on July 6, 1993 and by the Respondent on September 13, 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 Claimant Mary Ann Spollito against Respondent Barbara Dougias is dismissed.
2. The parties shall bear their respective costs.
3. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Mary Ann Spollito shall be retained by the NASD, Inc.

**AFFIRMATION**

I, **JEROME GOODGAL**, 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.

  
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Signature of Arbitrator

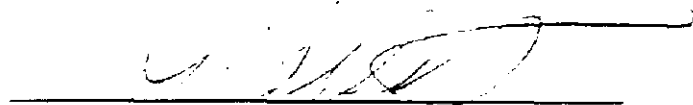
DATE OF DECISION: December 1, 1993

STATE OF:

SS:

COUNTY OF:

On this 24<sup>th</sup> day of November 1993, before me personally appeared **Jerome Goodgal** to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

  
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HENRY NAGELHOUT  
NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES FEBRUARY 1, 1995