

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Roy E. and Norma G. Bie

93-03925

Name of Respondents

Richard Caruso
John Hancock Distributors, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on September 28, 1993, Claimants Roy E. and Norma G. Bie, who appeared through their representative, Robert M. Roth, Appleton, WI, alleged that Respondents Richard Caruso and John Hancock Distributors, Inc. sold them an inappropriate tax exempt mutual fund and an unnecessary life insurance policy, which were not consistent with their investment needs or objectives. The Claimants further alleged that the Respondents engaged in an unlawful course of conduct in which they knowingly and recklessly made representations and recommendations which acted as fraud upon Claimants and induced Claimants into investing in inappropriate investments, and that intent of such misrepresentations was to generate commissions for Respondents. The Claimants also alleged that the Respondents induced them to transfer their assets into this inappropriate tax exempt mutual fund, and purchase a life insurance policy they neither needed nor could afford, and to borrow from their existing life insurance policy thus decreasing the death benefit of such policy and creating an additional expense for interest. The Claimants contended that these were unsuitable investments which the Respondents recommended only to generate commissions and that they should be held liable in this matter.

Respondents Richard Caruso and John Hancock Distributors, Inc., through their in-house counsel, Jennifer L. Wieloch, Esq., Boston, MA, maintained that the claims were barred by laches, waiver and estoppel, that any misinformation or improper advice that may have been given to Claimants were given by a party not acting as an agent of Respondents, and that the arbitration form has no jurisdiction with regard to those claims involving the insurance business. The Respondents contended that the Claimants are not entitled to any relief, and therefore, the complaint should be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

The Motion to Strike Claims relating to insurance policies of the Claimants were previously considered by the Arbitrator and denied.

RELIEF REQUESTED

Claimants Roy E. and Norma G. Bie requested compensatory damages in an amount of not less than \$9,802.00, plus pre- and post- award interest at the rate of 10%, and expenses, including reasonable consulting fees, filing fees, and any other costs deemed reasonable.

Respondents Richard Caruso and John Hancock Distributors, Inc. requested that all claims be dismissed in their entirety, plus attorney's fees.

AWARD


Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Donald E. Cline, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on September 3, 1993 and by the Respondents on November 2, 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 John Hancock Distributors, Inc. is liable and shall pay to Claimants Roy E. and Norma G. Bie \$5,000.00 in actual damages.
2. The claims of the Claimants Roy E. and Norma G. Bie against Respondent Richard Caruso are dismissed in their entirety.
3. The parties shall bear their respective costs and attorneys' fees.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc. Respondent John Hancock Distributors, Inc. is liable and shall pay \$75.00 to the Claimants as reimbursement of one-half of the filing fee.

AFFIRMATION

I, DONALD E. CLINE, 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.


Signature of Arbitrator

DATE OF DECISION: May 5, 1994