

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Joseph K. Burgess

NASD Arbitration
No. 93-05011

Name of Respondent(s)

Michael Rawlinson

REPRESENTATION

For Claimant: In Propria Persona

For Respondent: Eugene B. Harper, Esq.

CASE INFORMATION

Statement of Claim filed: December 1, 1993

Claimant's Submission Agreement signed: January 21, 1994

Statement of Answer filed by Respondent: March 14, 1994

Respondent's Submission Agreement signed: March 1, 1994

HEARING INFORMATION

Pre-Hearing Conference: None

Hearing Date(s)/Sessions: January 19, 1994 (2 sessions)

Hearing Location: San Francisco, California

CASE SUMMARY

Claimant alleged:

Claimant was a customer of California Federal Bank for many years and sought advice from Michael Rawlinson, a bank employee who handled investments for bank customers, in connection with investment of retirement funds. Claimant invested in Putnam Funds in October 1992 pursuant to the advice of Mr. Rawlinson. Mr. Rawlinson informed Claimant that if Claimant signed a letter of intent to invest \$1,000,000 and invested that amount within one year, Claimant would be subject to no fees or other sales charges. In August 1993, on the advice of Mr. Rawlinson, Claimant reinvested some of his money in Oppenheimer Funds, and signed all necessary transfer papers. Subsequently, Claimant received a statement from Putnam which indicated a sales charge of \$7,789.56. Claimant contacted Putnam and was informed that he was subject to the sales charge because he did not keep his money in the fund for two years. Had Mr. Rawlinson disclosed to Claimant that Claimant would be charged a fee for transferring his money to Oppenheimer, Claimant would not have effected the transfer.

Respondent alleged:

Claimant was fully informed of all expenses that would be incurred by a transfer of his investment from Putnam to Oppenheimer Funds, and Claimant elected to make the transfer. Claimant executed written acknowledgments that he could have retained his investments with Putnam and incurred no charges but elected to switch to Oppenheimer and pay the requisite charges.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$7,789.56.

Respondent requested dismissal of Claimant's claim with costs assessed against Claimant.

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 remain on file with the NASD.

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:

Claimant's claim for compensatory damages in the amount of \$7,789.56 is denied. The record as a whole does not support the understanding of Claimant that there would be no expense incurred in the transfer and reinvestment of funds.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following forum fees are assessed:

All forum fees are assessed against Respondent. The fees to be paid by Respondent are calculated as follows: Two (2) hearing sessions @ \$200.00 per session for a total fee of \$400.00. The NASD shall refund the \$200.00 hearing sessions deposit previously deposited by the Claimant.

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

ARBITRATOR

Name

Nancy Hutt

Public/Industry

Public Arbitrator

Arbitrator's Signature

Nancy Hutt

Nancy Hutt

Date of Decision:

February 3, 1995

Date Served: 02/13/95