

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Joan Russo

94-00972

Name of Respondent

Educators Financial Management
Matthew Leo

REPRESENTATION

For Claimant: Christopher W. Critelli, Esq., Garden City, New York.

For Respondents: Matthew R. Leo, Sedona, Arizona.

CASE INFORMATION

Statement of Claim filed: February 1, 1994.

Claimant's Submission Agreement signed on: February 1, 1994.

Joint Statement of Answer filed by Respondents on: July 7, 1994.

Respondent Matthew Leo's Submission Agreement signed on: August 17, 1995.

Respondent Educators Financial Management's Submission Agreement signed on: August 17, 1995.

HEARING INFORMATION

Pre-Hearing Conference: February 15, 1995 / One Session.

Hearing Date / Sessions: No hearings were held in this matter.

Hearing Location: No hearings were held in this matter.

CASE SUMMARY

Claimant alleged that on or about December 18, 1989, Respondents made a direct investment of \$8,000 in Hard Assets I limited partnership on Claimant's behalf. Claimant further alleged that Respondents' registered representative solicited Claimant's investment in Hard Assets and that the investment was unsuitable for Claimant's IRA account. Claimant next alleged that investments made for an individual's retirement account should be limited to those types of investments which have an ascertainable value at the end of each trading day. Claimant further alleged that the investments recommended by Respondents, and obtained by Respondents on behalf of the Claimant were unsuitable for Claimant's IRA account because Claimant's investment in Hard Assets I limited partnership did not have a readily ascertainable value at the end of each trading date. Claimant also alleged that she relied upon the accuracy of the prices and values represented in the monthly statements rendered by the Respondents and that the account statement indicated that the value of Claimant's investments remained the same from the date of purchase up to and including the present.

Respondent maintained that in 1989 Claimant invested \$8,000 in Hard Assets I, a limited partnership, for Claimant's IRA account and that the investment was solicited by a registered representative of Educators Financial Management. Respondents further maintained that the custodian for Claimant's IRA account was Cole Taylor Bank of Chicago ("Cole Taylor"). Respondent further maintained that Cole Taylor purchased Claimant's investment for the Claimant's benefit on November 1, 1989, and that, as custodian for Claimant's IRA account, Cole Taylor was responsible for reporting the status of the Claimant's account to the Claimant. Respondents next maintained that Educators Financial Management never issued statements, values or made any representations concerning the value of the Claimant's account and that any statements relied upon by Claimant were not issued by Educators Financial Management but rather issued by Cole Taylor and Claimant's Mutual Fund. Respondents maintained that the investment was suitable for the Claimant and that there is no requirement that an IRA investment must have an ascertainable value at the close of each trading day. Respondent also maintained that the lack of a daily fair market value does not in and of itself render an investment unsuitable for an IRA investment. Respondent then maintained that reporting valuations to the Claimant was the responsibility of the Claimant's IRA custodian, Cole Taylor.

RELIEF REQUESTED

Claimant requested:

1. Liquidation of Claimant's investment at the value set forth in the most recent portfolio account statements, as of December 31, 1993, which was \$8,000.
2. Reasonable attorney's fees.
3. Costs and disbursements of this arbitration proceeding.
4. Such other and further relief as the arbitrators deem just and proper.

Respondents requested:

1. That Claimant's Claims against respondents be dismissed.
2. That Respondents be awarded against Claimant all costs and expenses incurred by Respondents in defending this claim.

OTHER ISSUES CONSIDERED & DECIDED

Respondents requested a prehearing conference with the arbitrator concerning Respondents' discovery requests to Claimant. A telephonic prehearing conference was scheduled for February 15, 1995 at 2:00 P.M. Eastern time. The time and date of the telephonic conference was confirmed with the parties and arbitrator over the telephone and in a letter, dated February 7, 1995, sent to all parties and the arbitrator via facsimile and regular mail on February 7, 1995. The arbitrator and Respondents' representative appeared at the telephone conference but the Claimant's representative did not appear at the telephone conference and as a result the conference was canceled.

Respondent filed a Motion to Dismiss Claimant's Statement of Claim, dated February 21, 1994, based upon Claimant's failure to produce documents and for failing to state a cause of action upon which relief could be granted. Respondent served Claimant with the Motion to Dismiss via certified mail. The Claimant did not file a response to the Respondents' Motion.

AWARD

After considering the pleadings submitted by the parties, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claim is dismissed with prejudice in its entirety as against Respondents Matthew Leo and Educators Financial Management.

2. Claimant shall not be entitled to a refund of any hearing session deposit paid.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

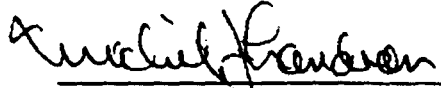
1. Claimant is assessed the sum of \$200 which represents one session fee, less hearing session deposit of \$200 paid by Claimant leaving \$0 due.

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

Arbitrator's Signature

Name

Public Chairman


Michel J. Landron, Esq.


Date of Decision: May 8, 1995

STATE OF: *New York*

SS:

COUNTY OF: *New York*

On this *8th* day of *May*, 1995, before me personally appeared Michel J. Landron, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.


ALICE L. LAM
Notary Public, State of New York
No. 41-4655661
Qualified in Queens County
Commission Expires May 31, 1997