

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

David D. Becker

94-01639

Name of Respondent(s)

Kirkpatrick, Pettis, Smith, Polian Inc.
James Clark

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on May 3, 1994, Claimant David D. Becker, who appeared Pro Se, alleged that Respondents Kirkpatrick Pettis, Smith, Polian, Inc. ("KPSP") and James Clark ("Clark") misrepresented the nature, risk and fees of the Van Kampen - Merritt Short Term Global Fund ("the Fund"). Claimant further alleged that on July 13, 1992, Clark recommended the Fund as a risk-free investment, as safe as T-Bills with a 1% exit fee after 18 months. Claimant contended that after confirming with Clark that he could not lose any principal, he invested \$110,000.00 in the Fund. Claimant further contended that on April 19, 1994 he executed a sell order, and realized a loss of principal for which Respondents should be liable.

Respondents, Kirkpatrick, Pettis, Smith, Polian, Inc. and James Clark, through their representative, Raymond R. Hessling, Jr., maintained that Clark never made a statement that an investment in the Fund was guaranteed or could be made on a "risk-free" basis. Respondents further maintained that on or about July 13, 1994, Clark had a discussion with Claimant during which the relative merits of an investment in short term Treasury obligations and in a mutual fund like the Fund in question were discussed. Respondents contended that Claimant had made other investments with Respondents of a similar character as the investment in the Fund. Respondents further contended that the Funds Prospectus states that, "...the Fund is designed for the investor who seeks a higher yield than a money market fund . . . there is no assurance that the Fund will achieve its investment objective", and " . . . the net asset value and yield of the Fund will fluctuate depending on market conditions and other factors". Respondents maintained that Claimant received complete accurate information from Clark regarding his investment in the Fund, the Fund's Prospectus was provided to Claimant prior to his investment,

and that Claimant's losses were a result of market conditions and therefore they should not be held liable for Claimants loss.

RELIEF REQUESTED

Claimant David D. Becker, requested \$6,598.60 in actual damages.

Respondents, Kirkpatrick, Pettis, Smith, Polian, Inc. and James Clark, requested that eh claims of the Claimant be dismissed.

AWARD


Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Allen Kilik, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on April 25, 1994 and by the Respondent KPSP on September 6, 1994. Respondent Clark did not submit a submission agreement.

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. Respondents Kirkpatrick, Pettis, Smith, Polian, Inc. and James Clark are jointly and severally liable and shall pay to Claimant David D. Becker \$1,500.00 in actual damages.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant David D. Becker, shall be retained by the NASD, Inc. Respondents Kirkpatrick, Pettis, Smith, Polian, Inc. and James Clark are jointly and severally liable and shall pay to Claimant \$150.00 as reimbursement of the filing fee.

AFFIRMATION

I, Allen Kilik, Esq., 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.



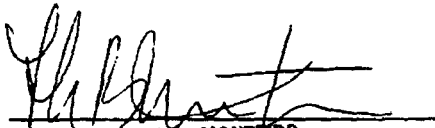
Allen Kilik, Esq.

STATE OF NEW JERSEY

ss:

COUNTY OF ESSEX

On this 19 day of April 1995, before me personally appeared Allen Kilik, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



HELENA B. MONTEIRO
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES MAY 3, 1996

DATE OF DECISION:

April 24, 1995