

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Edward L. Ferdinand

95-00727

Name of Respondents

Estate of Stephen J. Schappell
Mercer Securities, Ltd.

REPRESENTATION

For Claimant Edward L. Ferdinand ("Claimant"): Ralf Gilbert, Esq.
of Ralf Gilbert Law Offices, Fairless Hills, Pennsylvania

For Respondent Estate of Stephen J. Schappell ("Schappell"): Bruce
G. Schappell, Executor

For Respondent Mercer Securities, Ltd. ("Mercer"): no
representative appear at the hearing on Mercer's behalf

For Respondent William B. Boyd, III ("Boyd"): Joseph F. Keenan,
Esq. of the law firm of Bochat & Keenan, P.C., Garden City, New
York

CASE INFORMATION

Statement of Claim filed: February 9, 1995

Amended Statement of Claim filed: March 28, 1995

Claimant's first Submission Agreement signed on: February 8, 1995

Claimant's second Submission Agreement signed on: March 23, 1995

Respondent Schappell's Estate filed a Statement of Answer on April
25, 1995, but no submission agreement was executed.

Joint Statement of Answer filed by Respondents Mercer and Boyd on:
April 17, 1995

Respondents Mercer and Boyd did not file executed submission
agreements.

HEARING INFORMATION

Hearing Date/Sessions: October 25, 1995 - two sessions
Hearing Location: NASD District Office, Philadelphia, Pennsylvania

CASE SUMMARY

Claimant was a 65 year old retired investor in September, 1993 when he entrusted his life savings consisting of securities and cash of approximately \$296,000 to Mercer at the behest of the respondent broker, Schappell. Claimant alleged that Schappell had been his broker at other brokerage firms for approximately five years. Claimant alleged that Schappell was well aware of the Claimant's investment objectives of low-risk, income producing investments consisting of investment grade securities and no common stock.

Claimant alleged that despite these limitations, Schappell engaged in a series of unauthorized trades in high-risk, speculative securities and common stock resulting in the loss of almost fifty per cent of the value of Claimant's portfolio between September, 1993 and March, 1994. Claimant alleged that he relied upon Schappell's representations and assurances regarding the quality and suitability of the investments. Claimant further alleged that Mercer and its Managing Director, William Boyd, failed to comply with the rules and regulations which would have prevented Schappell from engaging in the unauthorized and unsuitable trades.

In their joint Answer, Respondents Mercer and Boyd denied all allegations of wrongdoing alleged by Claimant. These Respondents maintained that Claimant received monthly account statement and confirmations regarding all of the disputed trades and that no complaint was ever made to them until after Schappell's death in December, 1994. These Respondents maintained that all investments were in accord with Claimant's investment objectives, that there were no unauthorized trades and there was no failure to supervise and that the losses were solely attributable to market conditions. They further maintained that Claimant failed to mitigate his damages.

In a letter response from the executor of the Estate of Stephen J. Schappell dated April 7, 1995, the executor denied any knowledge of the claim and maintained that the estate is insolvent and that he will provide documentation in support of that contention to the NASD after the estate is finalized.

RELIEF REQUESTED

Claimant requested damages in the amount of \$144,390.52 together with punitive damages, interest, costs and attorney's fees.

Respondents Mercer and Boyd requested that Claimant's claim be dismissed and that all costs be 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 originals remain on file with the NASD.

At the commencement of the hearing, the attorney who filed the joint Answer on behalf of Mercer and Boyd withdrew his representation on behalf of Mercer, and Mercer was therefore unrepresented at the hearing.

Although Respondents Schappell, Mercer and Boyd did not file submission agreements, pursuant to Section 12 of the Code of Arbitration Procedures, they are required to arbitrate upon the demand of a customer. As the Claimant herein is a customer who demanded arbitration, the Panel exercised its jurisdiction over the Respondents and they are bound by the Panel's decision.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The arbitrators find in favor of the Claimant and against the Respondents Mercer Securities, Ltd. and the Estate of Stephen J. Schappell, jointly and severally, in the amount of \$84,942.00, inclusive of interest.
2. That Claimant's claim against Respondent Boyd are denied in their entirety.
3. That the parties shall bear their respective costs and attorney's fees, except as provided herein.
4. Any other relief not specifically provided for is hereby denied.

FORUM FEES

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

2 sessions X \$750 = \$1,500 minus hearing session deposit of 750 = net \$750 due.

Forum fees Assessed jointly and severally against Mercer Securities, Ltd. and the Estate of Stephen J. Schappell so that they shall pay forum fees in the amount of \$750.

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

DATE

11/30/95

Concurring Arbitrators' Signatures

Joseph R. Lally
Joseph R. Lally, Chairperson
Public Arbitrator

H. Payson Brickley
H. Payson Brickley
Public Arbitrator

Clifford A. Harwick
Clifford A. Harwick
Public Arbitrator

Date Award Served by the NASD, Inc.:

December 7, 1995

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Public Arbitrator

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Industry

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