

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Duncan Neville and Martha Neville

95-00795

Name of Respondents

David D. Otis
Comprehensive Financial Services
Securities Service Network

REPRESENTATION

For Claimants Duncan Neville and Martha Neville (the "Nevilles"): Steven Mitchel, Esq. and Andrew Brenner, Esq. of Mitchel & Associates, P.A., Miami, FL.

For Respondent Securities Service Network, Inc. ("SSN"): Christopher G. Lazarini, Esq. of Martin, Tate, Morrow & Marston, P.C., Memphis, TN.

For Respondent Comprehensive Financial Services, Inc. ("CFS"): Gary A. Barnes, Esq. of Gambrell & Stolz, Atlanta, GA. (see "Other Issues")

For Respondent David D. Otis ("Otis"): Pro se. (see "Other Issues")

CASE INFORMATION

Statement of Claim filed on February 8, 1995.

Claimants' Submission Agreement signed on February 14, 1995.

Statement of Answer filed by Respondent, SSN on April 21, 1995.

Statement of Answer filed by Respondent, CFS on May 22, 1995.

Respondents' CFS and SSN Submission Agreement respectively signed on May 22 and April 21, 1995.

Respondent, Otis, did not appear at the hearing nor did he submit a Statement of Answer or

execute a Submission Agreement as required by Sections 12 and 25 of the Code of Arbitration Procedure (see "Other Issues").

HEARING INFORMATION

On May 3, 1995 a Pre-Hearing Conference was conducted by telephone with an arbitrator present.

On May 13 and 14, 1996 in Fort Lauderdale, FL. a hearing lasting four sessions was conducted.

CASE SUMMARY

Claimants allege that they are unsophisticated investors who invested their life savings and their inheritance with Respondent Otis. At the time the initial investment was made, Claimants stressed to Mr. Otis that they wanted low risk investments.. Mr. Otis not only assured them that safety of principal would be their number one investment objective, he further promised that he would not allow any particular investment to drop more than 10% from its high point. Contrary to these investment objectives and promises, Mr. Otis, by and through his employers Comprehensive Financial Services and Securities Service Network, placed these Claimants in unsuitable investments. Furthermore, Mr. Otis treated these accounts with discretion and placed them in a margin position wholly unsuitable for these Claimants. Between January 20, 1994 (the date the accounts were transferred from CFS to SSN) until July, 1994 (the date the Nevilles pulled their accounts from SSN), these accounts suffered losses in excess of \$200,00.00.

Claimants bring their claims for breach of a fiduciary duty owed to Claimants, fraud and unsuitability. Claimants further allege that these Respondents violated New York Stock Exchange Rule 405 by placing these Claimants in the particular types of investments referenced above. Respondents Otis and SSN breached their duty to Claimants by abandoning Claimants while the value of their investments was plummeting. The claims against Respondent SSN are made under the theory of Respondeat Superior as well as on their negligent hiring of Otis and their subsequent lack of supervision and control over him. SSN also had an independent duty to monitor the Neville's accounts for suitability which they failed to do. These claims are made pursuant to all applicable federal and state statutory and common law causes of action.

Respondent SSN denied all allegations of wrongdoing asserted against it. In addition, Respondent SSN alleged that Claimants had an existing relationship with Otis and CFS for one year prior to transferring their accounts to SSN; that Claimants' investments were suitable and entirely consistent with stated investment objectives attested to by Claimants in the New Account Form; that Claimants' investments were consistent with Claimant' past history at CFS; that Claimant expressed no dissatisfaction with their accounts or with the actions of SSN; that any losses in Claimant' accounts were due to market fluctuations and that Claimants' had incurred no damages as a result of any actions or inactions on the part of SSN.

RELIEF REQUESTED

Claimants request damages in the amount of \$343,000.00 in the joint account and \$131,000.00 in Mrs Neville's individual account pursuant to Fla. Stat. Section 517. claimants requested costs, attorney's fees and punitive damages.

OTHER ISSUES CONSIDERED & DECIDED

The claim in this matter was originally filed on February 8, 1995, by the Nevilles and Arthur Benson against CFS, SSN and David Otis. Irja Benson was added as an additional Claimant shortly thereafter. Prior to the hearing, Claimants Nevilles reached a settlement with Respondent CFS. Furthermore, Arthur and Irja Benson dismissed their claims against Respondent CFS with prejudice and against Respondents SSN and David Otis without prejudice. Accordingly, the only claims presented to the arbitration panel were the claims of the Nevilles against SSN and David Otis.

It was determined at the time of the hearing that neither of the parties nor the NASD had been successful in contacting Mr. Otis and providing him with notice of the arbitration hearing. Therefore, the panel has dismissed all claims against David Otis without prejudice.

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.

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. Respondent, Securities Services Network, Inc., is found not liable and, therefore, all claims against it are hereby dismissed.
2. Claimants requests for attorney fees, costs, and punitive damages are hereby denied.

OTHER COSTS

Other than as provided below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the panel has assessed the following Forum Fees in the amount of \$2,700.00 (one pre-hearing conference x \$300.00 plus four hearing sessions x \$600.00).

1. Claimants are hereby assessed \$1,350.00 for which the NASD shall retain the \$600.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$750.00.
2. Respondent SSN is hereby assessed \$1,350.00 payable to the NASD.
3. Respondent SSN shall pay to the NASD the Section 45 surcharge of \$200.00.
4. The NASD shall retain the \$250.00 non-refundable filing fee paid by the Claimants.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

/s/

Public

Allen J. Kaplan, Esq.

/s/

Peter Brown

Industry

/s/

Abe Mintz

Public

June 28, 1996

Date of Decision: _____