

N.A.S.D. REGULATION AWARD

· NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Renate E. Knapp & Phillip W. Knapp, Jr.

95-00949

Name of Respondents

First Albany Corporation
Jeffrey A. West
Timothy A. Meigher

REPRESENTATION

For Claimants Renate E. Knapp and Phillip W. Knapp, Jr. ("Claimants") appeared Robert Fitzpatrick, Esq. located in Albany, New York.

For Respondents First Albany Corporation, Jeffrey A. West and Timothy A. Meigher ("Respondents") appeared Brian F. Mumford, Esq. of the law firm of Harvey and Harvey, Harvey & Mumford located in Albany, New York.

CASE INFORMATION

The Statement of Claim was filed on February 19, 1995.

Claimants' Submission Agreement was signed on February 16, 1995.

A Joint Statement of Answer was filed by Respondents' First Albany Corporation and Jeffrey A. West on June 25, 1995.

Respondent First Albany Corporation's Submission Agreement was signed on May 31, 1995.

Respondent Jeffrey A. West's Submission Agreement was signed on May 20, 1997.

Respondent Timothy A. Meigher's Submission Agreement was signed on April 7, 1997.

HEARING INFORMATION

Pre-Hearing Conference:	April 16, 1996	-	1 Session
Hearing Dates/Sessions:	October 30, 1996	-	2 Sessions
	November 18, 1996	-	2 Sessions

The hearing was held at the Marriott Hotel, 189 Wolf Road, Albany, New York.

CASE SUMMARY

Claimants alleged that Respondent West traded in mutual funds in all four of Claimants accounts in contravention of the specific policy of the Board of Governors as listed in the NASD Rules of Fair Practice.

Claimants alleged that Respondent West transferred investments from one fund family to another fund family in order to generate commissions and sales credits for himself and the other Respondents. He allegedly did this even though he could have switched within the same family to an investment similar to the one he ended up in without incurring any charges to Claimants.

Claimants alleged that Respondent West churned their accounts selling some investments and buying others in order to increase his earnings and without regard to their needs and objectives.

Claimants alleged that Respondent West recommended investments that were unsuitable for conservative investors, making recommendations so that he could earn additional commissions.

Claimants alleged that Respondent West failed to place some mutual funds on automatic reinvestment in order to reinvest that money at a later date and earn commissions and sales credits he would not otherwise be entitled to.

Claimants alleged that Respondent West recommended that Mr. Knapp's Ira rollover be split into two fund families in order to avoid break points on mutual funds, because he would have made less commission and sales credits if the investments were made within one fund family. Claimant further alleged that if Claimants did agree to this split in order for Respondent West to earn additional sales credit, then they would be making an illegal gift to all Respondents.

Claimants alleged that Respondent West sold all their mutual fund positions out in order to purchase over the counter stocks, which Respondent First Albany made a market in, and odd lots of long term bonds adding substantial risk to their portfolio in order to earn additional commissions and sales credits for himself.

Claimants alleged that Respondents First Albany Corporation and Timothy Meigher failed in their responsibility to supervise Mr. West in that they allowed him to trade in mutual funds in Claimant's accounts. Claimants alleged that Respondents First Albany Corporation and Timothy Meigher allowed him to switch from one mutual fund family to another, when other similar funds were available in the first fund family and the monies could have been reinvested without charge. They allegedly allowed him to destroy the diversification of Claimant's accounts by allowing him to move all their mutual fund investments into over the counter stocks and odd lots of bonds. They also allegedly allowed him to invest Mr. Knapp's IRA Rollover monies in several mutual fund families to avoid break points in order to increase his earnings. They allowed Mr. West to correspond with Claimants without such correspondence approved beforehand and contained in their correspondence file. They further allowed Mr. West to fill out Claimant's new account forms with false and misleading information and did not follow up on why it was not signed and returned by Claimant's in a timely manner. Claimants alleged that Respondents never investigated why Claimant's investment objectives and trading patterns changed abruptly upon their being assigned Mr. West as a broker.

Respondents denied that Claimants accounts were churned. Respondents plead that all of their investments in the accounts were directed by Claimants and not by Respondents. Respondents denied that their supervision was inadequate and plead that they followed all the rules properly.

Respondents further maintained that Claimants, through their Statement of Claim, state the following allegations: failure to supervise; churning; purposefully staging transactions to avoid break points; executing transactions without regard to deferred sales charges; trading in unsuitable securities; and failing to automatically reinvest claimants' purchases.

In response to the claims asserted by Claimants, Respondents maintained the following:

A. Failure to Supervise

The investment strategy implemented by West was done in response to a falling market, and only after full disclosure, after lengthy conversations with Mrs. Knapp, and only with her informed authority. Under such circumstances, there is no basis for a claim of lack of supervision.

B. Churning

Respondents contend there was no churning. (1) An essential element of churning is the broker's control over the account. West never controlled these accounts and claimants have never claimed that West controlled their accounts. (2) The trading in claimants' accounts was not excessive as a matter of law. Under New York law, an annualized turnover ratio of less than two does not rise to the level of churning. The turnover ratio for the four accounts was as follows:

Account 6830: 1.14 Account 8120: .60 Account 7604: .62 Account 8636: .62

All of the transactions in claimants' accounts were made at the direction of Mrs. Knapp who was informed about each transaction and reviewed all confirmations and account statements. Mrs. Knapp is an educated and intelligent woman and is employed in a challenging and demanding position. West and Mrs. Knapp thoroughly discussed her investment objectives and agreed upon an investment strategy. Mrs. Knapp had all of the necessary information to make her own decisions which were based upon an investment strategy to achieve the Knapps' retirement goals despite a very difficult market.

C. Break Points

West took advantage of the available breakpoints when the \$75,000.00 was invested in the Bond Fund of America, TransAmerica Capital Appreciation Fund, and the TransAmerica Special Ser Fund. At the time, the claimants agreed with West's proposed strategy to diversify the \$75,000.00 investment into these three funds. Bond Fund of America's break point was available at \$25,000.00 Respondent West invested \$25,006.20 in this fund in order to attain the breakpoint.

TransAmerica Capital Appreciation Fund's first break point was at \$100,000.00. Trans SPL SER fund does not provide for break points. Accordingly, West obtained all available breakpoints. Considering claimants' investment goals and the strategy agreed upon by West and Mrs. Knapp, respondents are at a loss as to what break points could have been realized beyond what was achieved.

D. Deferred Sales Charges

The allegations regarding deferred sales charges involve eight sales for a total of \$2,162.23 in sales charges. Prior to each transaction, West and Mrs. Knapp discussed the status of the market and reasons for and against each transaction. Mrs. Knapp always asked the financial implications. Once in possession of the relevant information, Mrs. Knapp made her own decision.

Mrs. Knapp also received and reviewed the confirmations upon the purchase of these securities which stated that when sold, the securities may be subject to a deferred sales charge. Mrs. Knapp also received and reviewed the confirmations upon the sale of these securities which stated the transaction was subject to a deferred sales charge. First Albany fulfilled its obligation to inform claimants that the securities would be subject to these charges.

E. Suitability

The claim of unsuitability is made without regard to the realities of the investments when they were made. Claimants contend that the September 1994 investments in the equities were "inappropriate for conservative investors". Within the context of the claimants' investments and investment goals, it is clear that these investments were appropriate for claimants and tailored for their investment strategy at that time. The market was falling and claimants accepted increased risk in an attempt to increase earnings.

In September 1994 West liquidated claimants' positions in mutual funds and purchased equities in an attempt to protect claimants' portfolio from the downside turn the mutual fund market experienced in 1994 as a result of the rise in interest rates. Mrs. Knapp and West discussed each transaction. The sale of the mutual funds was done with the intent of protecting claimants from adverse market conditions and was done with Mrs. Knapp's knowledge and consent. West explained the new strategy and its risks to Mrs. Knapp, who understood the increased risks and accepted them.

Claimants' generic allegations that West purchased unsuitable securities for claimants' accounts fail to allege which specific investments were unsuitable, why the investments were unsuitable and what the losses were on the specific unsuitable investments.

F. Automatic Reinvestments

Some of claimants' investments were placed on automatic reinvestment and some were not. The decision as to whether to place them on automatic reinvestment, or not, was made by Mrs. Knapp after thorough discussions with West. Claimants were aware that the funds could be automatically invested, but they chose to have some earnings available to decide whether to reinvest in the same fund or in some other investment. In fact, in most instances the earnings were not reinvested in the same fund from which they were earned, but rather were invested into different funds including a new fund, Euro Pacific Growth fund.

RELIEF REQUESTED

Claimants requested the panel grant and award for actual loss and loss of income in the sum of \$35,824.87, attorneys' fees, court costs and any other relief the panel deems just and reasonable.

Respondents requested that claimants' claims be dismissed in their entirety and that an award be rendered to Jeffrey A. West and First Albany Corporation for the costs, administrative expenses and disbursements of this arbitration, together with attorneys' fees.

OTHER ISSUES CONSIDERED AND 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 Regulation, Inc.

At the hearing, Respondents' counsel, Brian Mumford, requested that Timothy Meigher be joined in this matter as a co-respondent with the consent of Claimant's counsel. The Panel granted this request.

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. Respondents' First Albany Corporation, Jeffrey A. West and Thomas A. Meigher be and are hereby liable jointly and severally and shall pay to Claimants' the sum of \$6,500.00.
2. Claimants' request for interest is hereby denied.
3. All other relief requested is hereby denied.
4. Each party shall bear its own costs including attorneys' fees.

FORUM FEES

Pursuant to Rule 10332 (c) of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation shall retain the \$120.00 non-refundable filing fee previously deposited by Claimants and have assessed the following forum fees:

1 Pre-hearing conference x \$300.00	=	\$ 300.00
4 hearing sessions x \$400.00	=	\$1,600.00
Total outstanding	=	\$1,900.00

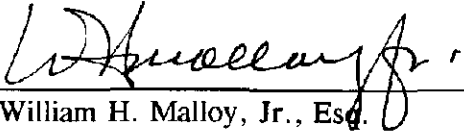
Claimants are hereby liable, jointly and severally, and shall pay NASD Regulation, Inc. the sum of \$950.00 which represents one-half of the forum fees assessed in this matter. However, Claimants previously deposited \$400.00 with NASD Regulation. Therefore, the amount due from Claimant is \$550.00.

Respondents are hereby liable, jointly and severally, and shall pay NASD Regulation, Inc. the sum of \$950.00

Fees are payable to NASD Regulation, Inc.

ARBITRATOR'S SIGNATURE

I, **William H. Malloy, Jr., Esq.**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules that this is my decision in the above referenced matter.



William H. Malloy, Jr., Esq.
Public Chairperson

I, **Prescott C. Sook, Esq.**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & rules that this is my decision in the above referenced matter.

Prescott C. Sook, Esq.
Public panelist

I, **James J. Carroll**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules that this is my decision in the above referenced matter.

James J. Carroll
Industry panelist

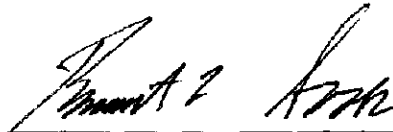
Date of Decision: May 20, 1997

ARBITRATOR'S SIGNATURE

I, **William H. Malloy, Jr., Esq.**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules that this is my decision in the above referenced matter.

William H. Malloy, Jr., Esq.
Public Chairperson

I, **Prescott C. Sook, Esq.**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & rules that this is my decision in the above referenced matter.



Prescott C. Sook, Esq.
Public panelist

I, **James J. Carroll**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules that this is my decision in the above referenced matter.

James J. Carroll
Industry panelist

Date of Decision: May 20, 1997

ARBITRATOR'S SIGNATURE

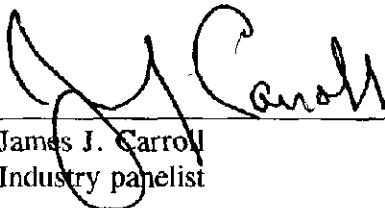
I, **William H. Malloy, Jr., Esq.**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules that this is my decision in the above referenced matter.

William H. Malloy, Jr., Esq.
Public Chairperson

I, **Prescott C. Sook, Esq.**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & rules that this is my decision in the above referenced matter.

Prescott C. Sook, Esq.
Public panelist

I, **James J. Carroll**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules that this is my decision in the above referenced matter.



James J. Carroll
Industry panelist

Date of Decision: May 20, 1997