

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Max K. Scheibner

95-01188

Name of Respondent

James H. Gilchrist, Sr.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 6, 1995, Claimant Max K. Scheibner ("Claimant"), alleged that Respondent James H. Gilchrist, Sr. ("Respondent"), made unsuitable recommendations which he followed to his detriment. Claimant further alleged that Respondent made misrepresentations regarding his annuity issued by Nationwide Life Insurance ("NLI") by promising him that the NLI investment was a compound tax deferred annuity without market risks for 5 years and with a rate of return of 10% for the first year. Claimant contended that over the first year, his investment steadily lost money. Claimant further contended that he met with Respondent to express his dissatisfaction with the handling of his account and that Respondent stated that if Claimant did not like the investment, he should surrender it. Claimant further alleged that he did surrender the investment and as a result of the above, he suffered a loss for which the Respondent should be held liable.

Respondent James H. Gilchrist, Sr., maintained that Claimant informed him that he was an experienced investor who was very knowledgeable about the stock market and preferred to manage his own account. Respondent further maintained that Claimant stated that he was interested in the NationWide Best of America because it would make him more susceptible to market fluctuation and he was very attracted to the potentially higher rate of return that this product offered. Respondent contended that until July 8, 1994, Claimant refused to sign the limited power of attorney that would have given Respondent the authority to move money between funds within the annuity as the market so dictated. Respondent contended that most of Claimant's losses occurred when Claimant managed his account against Respondent's suggested recommendations. Respondent further contended that when Claimant attended the meeting, he offered other options but Claimant declined. Respondent maintained that Claimant surrendered the policy and as a result of the above, he should not be held liable.

RELIEF REQUESTED

Claimant Max K. Scheibner, requested \$2,500.00 in actual damages, and \$2,500.00 for loss of interests, plus mental and physical pain.

Respondent James H. Gilchrist, Sr., requested that the claims of the Claimant be dismissed.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Louise T. Jeroslow, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Max K. Scheibner, on March 1, 1995, and by the Respondent James H. Gilchrist, Sr., on May 22, 1995.

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. Respondent James H. Gilchrist, Sr. is liable and shall pay to the Claimant Max K. Scheibner, \$1,320.00 in actual damages.
2. The parties shall bear their respective costs.
3. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Max K. Scheibner, shall be retained by the NASD, Inc. Respondent James H. Gilchrist, Sr. is liable and shall pay to the Claimant Max K. Scheibner, \$62.50 as reimbursement of one-half of the filing fee.
4. All other relief requests are denied.

AFFIRMATION

STATE OF FLORIDA

}
}

SS:

COUNTY OF Dade

I, Louise Jeroslow, 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.

Louise Jeroslow
Signature of Arbitrator

DATE OF DECISION: April 30, 1996