

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Theodore K. Cobb

and

95-01345

Name of Respondent

Andrew E. Gift

REPRESENTATION OF PARTIES

Theodore K. Cobb ("Claimant") appeared *pro se*.

Andrew E. Gift ("Respondent") appeared *pro se*.

CASE INFORMATION

The Statement of Claim was filed on or about March 17, 1995. Submission Agreement of Claimant Theodore K. Cobb was signed on March 13, 1995.

Statement of Answer was filed by Respondent Andrew E. Gift on or about May 20, 1995. Submission Agreement of Respondent Andrew E. Gift was signed on May 22, 1995.

HEARING INFORMATION

The hearing was held on Thursday, January 25, 1996 in Denver, Colorado for one (1) session.

CASE SUMMARY

Claimant alleged that he was overcharged fees pursuant to the terms of the asset management fee schedule agreed to between the parties. Claimant specifically alleged that he paid a total of \$5,361 in asset management fees which were to be offset by any commissions earned on the account.

Respondent denied the allegations set forth in the Statement of Claim. Respondent specifically stated Claimant paid a total of \$12,525 in fees and commissions to his advisor during the time period

in question which is 4.73% of his original investment or 1.58% per year. Respondent further stated that the Claimant had no complaints regarding the portfolio's performance.

RELIEF REQUESTED

Claimant requested an award in the amount of \$4,884.

Respondent requested that the claims asserted against him be denied.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered and to receive a conformed copy of the award while the original remains on file with the NASD.

AWARD

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

1. The parties had no clear meeting of the minds as to the meaning and application of the Asset Management Fee Schedule dated 10/10/91 (the "Agreement"). The terms and provisions thereof are ambiguous and not clear. Since Respondent Gift proposed the Agreement, it was his responsibility to either clearly explain its application and intent to Claimant, or to use language that does not leave any doubt about the application of the commission offset provisions.
2. The Agreement does not explicitly limit the time within which commissions must be earned to operate as an offset against the Initial Asset Management Fee. Thus, it is reasonable to so apply the commissions earned within the first year. The Annual Asset Management Fees, on the other hand, are subject to offset by commissions earned during each successive twelve (12) month period.
3. Therefore, the initial fee of \$1,988 and the first annual fee of \$193 were both offset by the \$3,116 commissions earned for the period October, 91 through October, 92.
4. The parties agree that a calculation error resulted in Claimant being overcharged \$197 for the second annual fee.
5. Respondent Andrew E. Gift is liable for and shall pay to the Claimant Theodore K. Cobb the sum of Two thousand three hundred seventy-eight dollars (\$2,378).

FORUM FEES

Forum fees are calculated at the rate of \$100 per hearing session. There was one (1) session x \$100 = \$100 in forum fees. Pursuant to §43(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall **retain** the non-refundable filing fee in the amount of \$50 and shall **retain** as forum fees the hearing session deposit in the amount of \$100 previously deposited with the NASD by the Claimant Theodore K. Cobb.

Pursuant to §45 of the NASD Code of Arbitration Procedure, the NASD shall **retain** the non-refundable member surcharge in the amount of \$100 paid by Multi-Financial Securities Co. **Fees** are payable to the National Association of Securities Dealers, Inc.

Dated:

/s/ James J. Cronin, Esq.

James J. Cronin, Esq.

Public Arbitrator, Presiding Chair

February 17, 1996