

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Norma M. and Robert A. Ayers

95-01625

Name of Respondents

Alliance Fund Distributors, Inc.
Thomas J. Fox
Moors & Cabot

REPRESENTATION

For Claimants Norma M. and Robert A. Ayers ("Claimants"): Sander A. Rikleen, Esq. of the law firm of Hutchins, Wheeler & Dittmar, P.C., Boston, MA

For Respondent Alliance Fund Distributors, Inc. ("Alliance"): Philip R. Schatz, Esq. of the Law Offices of Philip Ranson Schatz, New York, NY

Respondent Thomas J. Fox ("Fox") was not represented.

For Third Party Respondent Moors & Cabot, Inc. ("Moors & Cabot"): Sander A. Rikleen, Esq. of the law firm of Hutchins, Wheeler & Dittmar, P.C., Boston, MA

CASE INFORMATION

Statement of Claim filed: April 3, 1995
Claimants' Submission Agreement signed on: March 24, 1995

Alliance's Statement of Answer, Motion to Dismiss as Untimely, Cross-Claim Against Fox and Third Party Claim Against Moors & Cabot filed June 5, 1995
Alliance's Submission Agreement executed by Mark R. Manley, Assistant Secretary, Alliance Fund Distributors, Inc. on: June 2, 1995

Third Party Respondent Moors & Cabot filed its answer on: September 28, 1995

Moors & Cabot did not execute a Submission Agreement.

Respondent Fox neither filed a Statement of Answer or a Submission Agreement.

HEARING INFORMATION

Hearing Dates/Sessions: April 9, 1996 - two sessions
April 10, 1996 - two sessions

Hearing Location: NASD Executive Office, Washington, DC

CASE SUMMARY

Claimants alleged, among other things, that Fox withdrew \$75,000 from Claimants' account at Moors & Cabot and opened an account in their name at Alliance in which the \$75,000 was invested in Alliance Short-Term Multi-Market Trust. Claimants alleged that \$60,000 of the Claimants' Alliance Short-Term Multi-Market Trust shares were "Redeemed", but the redemption proceeds were never paid to Claimants or their Moors & Cabot account. Claimant alleged that they learned that the missing \$60,000 was wire transferred from Alliance to another account without Claimants' authorization. Claimants alleged that Alliance failed to act reasonably and failed to fulfill its duties to Claimants. Claimants alleged that Fox's conduct in connection with the Claimants' alliance account was a breach of his agreement with the Claimants.

Alliance denied any wrongdoing in connection with the handling of Claimants' account. Alliance maintained that Claimants' claim against it is untimely. Alliance maintained that Claimants' claim is based on a negligence theory and even if Claimants could prove negligence against Alliance, which Alliance denies, Claimants claim has not been brought within the applicable statutes of limitation. Alliance maintained, among other things, that it did act reasonably in connection with the wire transfer at issue. Alliance maintained that it is not responsible for purposeful wrongdoing of a third person for whom it had no control or supervisory responsibility. Alliance asserted a cross claim against Fox, the registered representative, as it maintained that Fox is responsible in whole or part for Claimants' damages. Alliance asserted a third party claim against Moors & Cabot maintaining that Moors & Cabot cloaked Fox in apparent or real authority over Claimants' account. Alliance asserted that Moors & Cabot should have investigated Fox's background and qualifications, should have properly supervised its registered representative, should have implemented procedures and controls to prevent registered representatives from perpetrating frauds, and should have detected and corrected such frauds. Alliance asserted that Moors & Cabot breached its duties.

Moors & Cabot denied all allegations of wrongdoing asserted against it and maintained, among other things, that it did not owe a duty to Alliance. Moors & Cabot maintained that the sole and superseding cause of Claimants' loss was Alliance's own failure to follow its written instructions. Moors & Cabot maintained that no law or statute provides Alliance with a right to be indemnified by Moors & Cabot.

Fox did not file an answer.

RELIEF REQUESTED

Claimants requested \$60,000, plus commissions or charges in the amount of \$2,246.33, plus interest on their moneys, punitive damages in an amount to be determined by the Panel, forum fees and costs.

Alliance requested that Claimants' claim be dismissed in its entirety; that if any award is rendered against it that it be award indemnification or contribution by Fox and/or Moors & Cabot; and that it be awarded all of its damages, plus interest, attorneys' fees, forum fees and costs.

Moors & Cabot requested that the Alliance's third party claim against it be dismissed in its entirety and that it be awarded its costs.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies. The parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

All correspondence sent to Fox by first class mail was not returned and presumed received by Fox. All NASD mailing to Fox are attached to this Award as Exhibit A. Pursuant to Section 12 of the Code of Arbitration Procedure ("Code") and the by-laws of the NASD, notwithstanding Fox's failure to answer, file a submission agreement or appear as well as Moors & Cabots failure to file a submission agreement the Panel exercised its jurisdiction over Fox and Moors & Cabot. Fox and Moors & Cabot are bound by the rulings and determinations in this award.

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 Thomas J. Fox is liable to Claimants and shall pay to the Claimants the sum of \$60,000, plus simple interest per annum at the rate of 8% from April 3, 1995 until the date the award is paid.
2. Thomas J. Fox is liable to Claimants for punitive damages and shall pay to the Claimants punitive damages in the amount of \$100,000.
3. That all other claims, cross-claims and counter-claims are denied in their entirety.
4. That the parties shall bear their respective costs, including attorneys' fees, except as specifically provided herein.

OTHER COSTS

Any and all postponement fees deposited by the parties shall be retained by the National Association of Securities Dealers, Inc. "NASD").

FORUM FEES

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

4 sessions X \$500 = \$2,000

Forum Fees Assessed Against: 50% against Alliance and 50% against Moors & Cabot. Claimants' hearing session deposit of \$500 shall be retained. Alliance is assessed forum fees in the amount of \$750, however, Alliance is entitled to offset this amount with its hearing session deposit of \$300 previously filed so that the amount due from Alliance is \$450. Moors & Cabot is assessed forum fees in the amount of \$750.

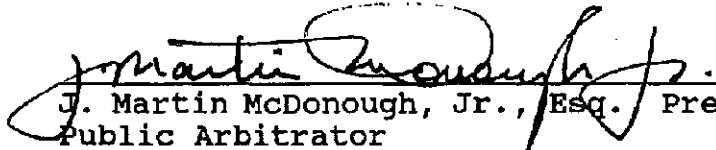
Fees are payable to the National Association of Securities Dealers, Inc.

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Date

5/16/96

Concurring Arbitrators' Signatures


J. Martin McDonough, Jr., Esq. Presiding
Public Arbitrator

Frederick H. Florschutz
Public Arbitrator

Judy K. Smith
Industry Arbitrator

Date Award Served by the NASD:

May 22, 1996

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Date

Concurring Arbitrators' Signatures

J. Martin McDonough, Jr., Esq., Presiding
Public Arbitrator

May 15, 1996

Frederick H. Florschutz
Frederick H. Florschutz
Public Arbitrator

Judy K. Smith
Industry Arbitrator

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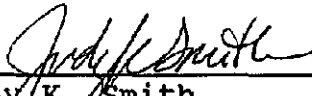
Date

Concurring Arbitrators' Signatures

J. Martin McDonough, Jr., Esq., Presiding
Public Arbitrator

Frederick H. Florschutz
Public Arbitrator

5-20-96


Judy K. Smith
Industry Arbitrator

Date Award Served by the NASD:

May 22, 1996