

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Karen M. Burkhardt

95-01854

Name of Respondents

Provident Securities & Investment Co.
Susan Sando

REPRESENTATION

Claimant Karen M. Burkhardt ("Claimant") appeared pro se.

For respondent Provident Securities & Investment Co. ("Provident") and Susan Sando ("Sando") (collectively referred to as "respondents") appeared Leslie C. Nomeland, Esq. of Provident Securities & Investment Co. located in Cincinnati, Ohio.

CASE INFORMATION

Statement of Claim filed: April 17, 1995.

Claimant's Submission Agreement signed on: April 11, 1995.

Respondents Provident's and Sando's Joint Statement of Answer was filed on: June 6, 1995.

Respondent Provident's Submission Agreement was signed on: June 6, 1995.

Respondent Sando's Submission Agreement was signed on: June 6, 1995.

HEARING INFORMATION

Hearing Date/Sessions: November 21, 1995 1 Session

The hearing was held at the Marriott Hotel located in Cincinnati, Ohio.

CASE SUMMARY

Claimant alleged that respondents were fully aware of her conservative investment history, risk tolerance, desire for safety of principal, necessity for fixed monthly income and admonition that no management or investment fees would be paid out of the principal investment.

Claimant further alleged that, commencing on October 21, 1992, respondents made unsuitable investments, contrary to her specific investment objectives. Claimant also alleged that respondents failed to inform her as to the nature of the securities and that they were contrary to her specific investment objectives. Claimant asserted that she relied upon respondents' material statements and representations in the purchase of the securities and that the statements and representations were made with the intention that she would rely upon such statements of were made with a reckless disregard to the truth. Claimant further asserted that respondents breached their fiduciary duties to use due care and skill in managing her accounts.

Respondents denied any allegations of wrongdoing and maintained that the securities claimant purchased conformed to her investment objectives. Respondent further maintained that claimant was not satisfied with the interest rate on her certificate of deposit and wanted to obtain investments which paid a higher current income. Respondents also maintained that claimant received a current prospectus for each security purchased, confirmations of the purchases, periodic statements of the account, and monthly payments of the income generated by her investments.

Respondents maintained that claimant continued to maintain an account at Provident and that claimant's original investments were still held in her account. Respondents also maintained that the income earned on her investments has more than offset the decline in the market value and that claimant has not suffered a net loss. Respondents contended that claimant received everything she bargained for and was fully informed of the benefits and risk associated with the securities.

RELIEF REQUESTED

Claimant requested entry of an award in her favor against respondents jointly and severally in the amount of \$10,000.00, the disgorging of all commissions and other income received by respondents from the trading of her account, restoration of her position prior to her dealing with respondents, interest, expenses, costs and such other and further relief as to which she may be entitled.

Respondents requested that the Statement of Claim be dismissed in its entirety and that costs of the proceeding be assessed against claimant.

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. All claims against respondents Provident and Sando be and hereby are dismissed in their entirety.
2. Each party shall bear their own costs, including attorney' fees, except that respondent Provident is liable and shall pay claimant \$200.00 to reimburse claimant for the hearing session deposit paid to the NASD.
3. All other claims are hereby denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Arbitrator has determined that the NASD shall retain the \$75.00 non-refundable filing fee and \$200.00 hearing session deposit previously deposited by claimant as full consideration for the hearing held in this matter.

Concurring Arbitrators' Signatures



Charles E. Fletcher, III, Esq.

sole arbitrator
