

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between .

Name of Claimant

Susan C. Evans

95-01901

Name of Respondents

Interstate/Johnson Lane
Richard Draffin

REPRESENTATION

For Claimant, Sydney L. Cottingham, Esq., of the law firm Cottingham & Porter, P.C., located in Douglas, Georgia.

For Respondent Interstate/Johnson Lane ("Interstate"), Pamela P. Warnement, Esq., of Interstate, located in Charlotte, North Carolina.

For Respondent, Richard Draffin ("Draffin"), Louise B. Duffy, Esq., of the law firm Sutherland, Asbill & Brennan, located in Atlanta, Georgia.

CASE INFORMATION

The Statement of Claim was filed on April 28, 1995. Claimant's Submission Agreement was signed on April 14, 1995.

A Joint Statement of Answer was filed by Respondents on June 16, 1995. Respondent Interstate's Submission Agreement was signed on June 16, 1995. Respondent Draffin's Submission Agreement was signed on June 4, 1995.

HEARING INFORMATION

Pre-Hearing Conference:	June 13, 1996	-	1 Session
Hearing Dates/Sessions:	June 19, 1996	-	2 Sessions
	June 20, 1996	-	2 Sessions

The hearings were held at the NASD offices in Atlanta, Georgia.

CASE SUMMARY

Claimant alleged that at the time she opened an account with Interstate, she was a divorced mother of three young children and employed part time by Cady Bag Company. Claimant further alleged that Cady Bag Company was a family business until its sale in 1993 which resulted in proceeds of approximately \$550,000.00 for Ms. Evans. Claimant contended that Respondent Draffin, a sales representative of Interstate, represented that he was qualified to act as her investment advisor and could do so without charging her a management fee. Claimant asserted that based on Draffin's representations, she opened an account to be directed by Respondent Draffin.

Claimant alleged that upon opening her account, she emphasized that her primary goal was safety of principal. Claimant contended Draffin assured her that investment in mutual funds which he chose would protect her principal. Accordingly, Claimant alleged she purchased shares in mutual funds which accounted for 87% of her portfolio.

Claimant alleged that she was unaware that her investments caused her to be 90% invested in fixed income securities through mutual funds or closed end investment companies that utilized leverage and held derivative securities. Claimant contended that she was exposed to significant risk of loss of principal should interest rates rise from their historically low levels at the time she made her investments. Claimant asserted that she was not apprised of the risk and was not aware of its consequences, and had she known of the risk, she never would have agreed to the investments recommended by Respondent Draffin.

Claimant alleged that in 1994, interest rates began to rise, causing her to lose approximately \$75,000.00 of the principal she invested. Claimant contended that Draffin did not advise her to limit her losses as he should have due to his position as her investment advisor, and she was therefore reluctant to sell her shares.

Additionally, Claimant alleged that Respondent Draffin excessively traded in her account, generating commissions for Respondents Draffin and Interstate. Claimant contended that the non-investment company portfolio was turned over four times in 5 1/2 months resulting in a loss of \$3885.00 before commissions. Claimant further alleged that the average daily equity of her non-investment company stock account was approximately \$18,000.00 and, during this short time, commissions of \$1887.00 were generated by her account to the Respondents.

Respondents Interstate and Draffin ("Respondents") maintained that Draffin and Claimant had known each other for a number of years prior to her opening an account at Interstate. Respondents further maintained that Draffin was generally aware of Evans' personal and financial circumstances at the time Evans contacted him to open the account. Respondents contended that Evans told Draffin that the \$550,000.00 she was depositing was a portion of the proceeds she was to realize from the sale of a business and that she would continue to receive payments from that sale in the future.

Respondents stated that Draffin advised Evans that she needed to have a certain level of income generated from the investments. Respondents also maintained that at no time did Evans say that she was unwilling to put any of her principal at risk. Accordingly, Respondents contended that Draffin prepared an investment proposal for Evans and discussed each fund with her and described the impact interest rates would have on her investments. Respondents claimed that Draffin explained to Evans the potential risks and also supplied her with each fund's brochure, prospectus, and other publicly available information. Respondents maintained that, after reviewing the materials, Evans instructed Draffin to proceed with various investments consistent with his recommendations.

Respondents maintained that Draffin and Evans spoke often to review the account status and to discuss the impact of interest rates on bond funds Evans held in her portfolio. Respondents contended that it was not until August of 1994 that Evans first called Draffin and questioned the investments in her account, claiming that she had been misled. Respondents maintained that a broker from A.G. Edwards had solicited Evans' business and suggested that her account had been mishandled in an apparent attempt to garner her account. Respondents further asserted that upon researching with the Putnam, one of the family of funds which Evans invested in, Evans was told that Draffin did a good job diversifying her portfolio and Evans apologized to Draffin for her complaints.

Respondents maintained that Draffin continued to advise Evans on her account and at no time did Evans complain that she did not understand her investments or account. Respondents further maintained that Evans was a sophisticated business person who understood the explanations provided by Draffin and received confirmations of all trades in her account. Respondents maintained that at all times, Evans was fully informed regarding the nature and status of her account and its investments.

RELIEF REQUESTED

Claimant requested judgment against Interstate and Draffin, jointly and severally, as follows:

1. for actual damages in the approximate amount of \$61,000.00, such amount to be more accurately determined based upon the proof of specific damages presented before the Arbitration Panel;
2. punitive damages in the amount of \$39,000.00;
3. costs, expenses, and disbursements, including reasonable attorneys' fees;
4. pre-judgment interest at the highest rate allowable; and
5. such other relief as the Arbitration Panel deems just and proper.

Respondents requested the claims against them be dismissed.

OTHER ISSUES CONSIDERED & 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 originals remain on file with the NASD.

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:

ARBITRATORS' REPORT

Claimant invested several hundred thousand dollars with Respondents in the summer of 1993, with the primary investment goal of generating sufficient income to replace her monthly salary of about \$3000.00. The majority of Claimants' funds were invested in several mutual funds, most of which carried a Morningstar rating of 4-5 stars and a low to average risk of loss. Those investments generated sufficient income to meet Claimants' needs, but suffered a drop in market value following the general decline of the bond market in 1994 - 1995.

The panel finds no evidence to support the charges of fraud or breach of express contract. The evidence is inadequate to prove the charge of churning, since it does not appear that the broker engaged in excessive trading for the purpose of generating commissions.

As to the charges of unsuitability, negligence and breach of fiduciary duty, the broker's conduct cannot be judged in hindsight. It must be viewed in light of the information known to him at the time of the trades, and the instructions and goals expressed to him at that time by the customer. The issue is not whether another advisor could have made a better recommendation, or whether the broker's recommended investments performed as he believed they would. Viewed in that light, we are not persuaded that the investment recommendation of Draffin were made without reasonable grounds for believing that they were suitable for Claimant upon the basis of the facts disclosed by her as to her other security holdings and as to her financial situation and needs. We are not persuaded that those investments were unsuitable.

Having found no wrongdoing on the part of the broker, the claim of negligent supervision necessarily fails.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$150.00 non-refundable filing fee previously deposited by Claimant and have assessed the following forum fees:

Pre-hearing Session Fees	\$300.00	(1 Session x \$300.00)
Hearing Session Fees	\$2000.00	(4 Sessions x \$500.00)
Total Forum Fees	\$2300.00	

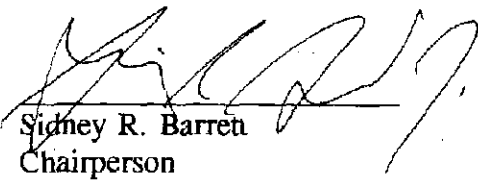
The arbitrators have determined that Claimant shall bear the cost of arbitration.

Claimant be and hereby is liable for the sum of \$2300.00 representing the total amount of forum fees assessed, less \$500.00 previously deposited, leaving \$1800.00 due. Therefore, Claimant shall pay \$1800.00 to the NASD.

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

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ARBITRATORS SIGNATURES



Sidney R. Barren
Chairperson

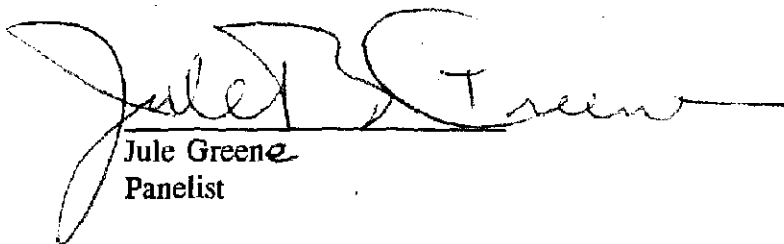
Jule Green
Panelist

Comer Hawkins
Panelist

Date of Decision: July 30, 1996

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Sidney R. Barret
Chairperson



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Comer Hawkins
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Comer Hawkins
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