

9-05162

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimants

Anthony & Rita LaPreste

95-03032

Name of Respondents

Janney Montgomery Scott, Inc.
Mitchell DiClaudio

REPRESENTATION

Martin G. Rubenstein, Esq., Levy, Angstreich, Finney, Baldante, Mann & Burkett, Philadelphia, PA appeared on behalf of Claimants Anthony and Rita LaPreste ("Claimants").

Anthony D. Reagoso, Esq., Reagoso and Baer, Media, PA appeared on behalf of Respondent Janney Montgomery Scott, Inc. ("JMS").

Respondent Mitchell DiClaudio ("DiClaudio") did not appear.

CASE INFORMATION

The Statement of Claim was filed June 16, 1995.

Claimants' Uniform Submission Agreement was signed March 21, 1996.

JMS's Statement of Answer was filed May 1, 1996.

JMS's Uniform Submission Agreement was signed April 16, 1996.

DiClaudio did not file an Answer nor an executed agreement to arbitrate.

HEARING INFORMATION

Hearing Date/Sessions: April 17, 1997/one session

Hearing Location: NASD Regulation District Office
Philadelphia, PA

CASE SUMMARY

Claimants alleged, among other things, that Respondents JMS and DiClaudio (collectively "Respondents") misrepresented GNMA securities and negligently managed Claimants' account. Claimants alleged that in June 1986 they purchased 145,370 units of fractional undivided interest in the Government Security

Income Fund GNMA Series 70438. Claimants alleged that DiClaudio was informed that they had recently sold their home and that Claimants' investment goal was safety of principal. Claimants alleged that DiClaudio advised Claimants that as long as they continued to reinvest in the accumulation fund their principal would remain intact. Claimants alleged that they invested \$85,954.37 in 1986 and that DiClaudio advised Claimants that this investment would provide a nice yield of \$745.00 per month and that their principal would remain constant. Claimants alleged that on June 16, 1989, they called DiClaudio and advised him that they wished to exit the GNMA investment and purchase certificates of deposit. Claimants alleged that at that time, DiClaudio informed them that their principal was diminished to \$64,700.00. Claimants alleged that DiClaudio further informed them that he had not realized that the GNMA Fund worked like that and did not realize that the monthly payments Claimants received were decreasing their capital. Claimants alleged that DiClaudio's actions were all taken in the capacity as an employee of JMS. Claimants alleged that Respondents provided incorrect information, knowing that Claimants would rely upon the information, which misled the Claimants and resulted in the loss.

Respondent JMS denied the allegations of wrong doing as asserted in the Statement of Claim. JMS maintained that DiClaudio ceased to be employed by JMS in 1990. JMS maintained that the claims are time barred under both the statute of limitations for the Commonwealth of Pennsylvania and the six-year eligibility rule of the National Association of Securities Dealers. In addition, JMS maintained that the claims are barred by the doctrine of laches and/or estoppel. JMS maintained that Claimants were fully advised of the nature of the investment, and the risks, when they authorized the transactions.

DiClaudio did not submit an Answer or respond to the allegations.

RELIEF REQUESTED

Claimants requested relief in the amount of \$21,254.37, along with interest, attorney's fees and the costs of this arbitration.

Respondent JMS requested that the claims be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

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

That pursuant to the by-laws of the NASD and Rule 10301 of the Code of Arbitration Procedure, the arbitrator determined that Respondent DiClaudio was required to submit to this arbitration notwithstanding his failure to file an executed Submission Agreement. Therefore, Respondent DiClaudio is bound by the arbitrator's rulings.

The arbitrator considered the joint request of the parties to adjourn the hearing following summary remarks by counsel and have the award based upon the written documentation of the parties and granted the request.

The arbitrator considered Respondent Janney Montgomery Scott's Motion to Dismiss as Time-barred and Claimant's Response thereto, and denied the Motion.

AWARD

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

1. That the Statement of Claim is denied in its entirety due to an absence of proof of loss. The relevant GNMA instrument paid interest and a return of principal on a monthly basis.
2. That each party shall bear its own costs and expenses, with the exception of the Forum Fees as specified below.
3. That Respondent JMS is liable to and shall reimburse Claimants for \$150.00, which represents one-half of the hearing session deposit previously submitted to the NASD Regulation.
4. That any and all relief not specifically addressed herein is denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

1 session x \$300.00 = \$300.00

Forum Fees assessed to Claimants at \$150.00 and to Respondent JMS at \$150.00. Claimants previously submitted a \$300.00 hearing session deposit to the NASD Regulation. As Respondent JMS has been ordered to reimburse Claimants for \$150.00, the hearing session deposit shall be applied to the Forum Fees assessed and neither Claimants nor Respondent JMS will have any further assessment due.

DATE

ARBITRATOR'S SIGNATURE

5/1/97

Robert F. Sanville
Robert F. Sanville, Presiding
Public Arbitrator

Date Decision Served by NASD Regulation:

May 7, 1997