

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Jeanette W. Howard

95-03184

Name of Respondent

Principal Financial Securities, Inc.

REPRESENTATION

The Claimant, Jeanette W. Howard, was represented by David N. McNees, Esq., attorney, located in Denison, Texas.

The Respondent, Principal Financial Securities, Inc., was represented by Stephen D. Howen, Esq., of Figari & Davenport, located in Dallas, Texas.

CASE INFORMATION

Claimant's Statement of Claim was filed on or about June 30, 1995.

Claimant's Submission Agreement was signed on June 26, 1995.

Respondent's Statement of Answer was filed on or about August 29, 1995.

The NASD has no record of Respondent having filed a Uniform Submission Agreement.

HEARING INFORMATION

The Hearing Sessions were January 19, 1996 for two (2) sessions, and February 6, 1996 for two (2) sessions.

The Hearing Location was Dallas, Texas.

CASE SUMMARY

Claimant, alleged that as a direct result of many months of unwarranted and steadfast refusals by the Respondent to comply with its obligations under the law and its responsibilities to follow express instructions, Claimant has incurred substantial income tax liability as well as significant accounting and legal expenses. Specifically, Claimant alleged:

- (1). Breach of Contract
- (2). Negligent Performance of Contract
- (3). Breach of Fiduciary Duty Between Principal and Agent
- (4). Negligence
- (5). Gross Negligence

Respondent denied each and every allegation by Claimant. In addition, Respondent stated the following affirmative defenses:

- (1). Estoppel and/or Waiver
- (2). Statute of Limitations bars all tort claims

RELIEF REQUESTED

Claimant requested an award be rendered as follows:

- (1). Respondent be ordered to prepare a corrected 1993 Form 1099-R reflecting tax free rollover rather than a taxable distribution of all IRA proceeds and file the corrected Form 1099-R with the IRS;
- (2). If Respondent is ordered to file a corrected 1993 Form 1099-R, Respondent be ordered to indemnify Claimant for all accounting and/or legal expenses incurred, taxes, penalties and interest assessed to and payable by Claimant in the event of an IRS audit or other inquiry due to Respondent's late issuance of a corrected Form 1099-R;
- (3). If Respondent is not ordered to prepare and file a corrected 1993 Form 1099-R, and indemnify Claimant for all expenses incurred, taxes, penalties and interest as referenced above in Number 1 and 2, Respondent be ordered to pay \$4,808.00, which constitutes Claimant's 1993 federal income tax liability related to the wrongful distribution of IRA proceeds to Claimant;
- (4). \$3,342.00 in accounting and professional fees incurred;
- (5). Attorneys Fees;
- (6). Costs of arbitration, including filing fees, hearing session deposits, and forum fees;
- (7). Prejudgment and post judgment interest at the maximum rate allowed by law;
- (8). \$250,000.00 in exemplary damages; and
- (9). Such other and further legal or equitable relief to which Claimant may be justly entitled.

Respondent requested an award be rendered as follows:

- (1). Claimant take nothing by reason of her claim;
- (2). The Panel award to the Respondent the recovery of all fees and expenses incurred in the arbitration; and
- (3). All other relief to which Respondent may show itself entitled.

OTHER ISSUES CONSIDERED & DECIDED

Claimant filed a motion with the NASD to change the situs of this matter to Sherman, Texas and the panel unanimously denied the motion.

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 hearings, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- (1). That the Respondent is liable for and shall pay the Claimant in the amount of \$40,000.00 in compensatory damages; and
- (2). That the Respondent is liable for and shall pay the Claimant in the amount of \$60,000.00 in exemplary damages. In making this award of exemplary damages, the undersigned arbitrators find that they have the authority to award exemplary damages after considering the written submissions and arguments of the parties.
- (3). That other than forum fees which are addressed below, all relief not specifically awarded is denied.

FORUM FEES

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

Four (4) hearing sessions x \$750.00 = \$3,000.00 minus hearing session deposit of \$750.00 = net \$2,250.00 due the NASD. The Respondent shall pay the Forum Fees in this matter in the amount of \$2,250.00 payable to the NASD. The NASD shall retain the Section 45 member surcharge in the amount of \$350.00 previously paid by the Respondent. Further, the Respondent shall pay the Claimant in the amount of \$750.00 for the hearing session deposited with the NASD and \$200.00 for the claim filing fee for a total = \$950.00 due the Claimant.

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

Concurring Arbitrators' Signatures:

Name

/s/ Hubert H. Chase
Hubert H. Chase
Public Arbitrator

March 28, 1996
Date

Name

/s/ Raymond Mirrer
Raymond Mirrer, Esq.
Public Arbitrator

Feb. 6, 1996
Date

Name

/s/ Jack R. Settles
Jack R. Settles
Industry Arbitrator

3/27/96
Date

For NASD Use Only

Date of Service of Award: April 3, 1996