

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

In the Matter of the Arbitration Between

**Name of Claimants**

Adrianna, Frank, and Marina Ferrante

NASD Case No.  
9503324

**Name of Respondents**

First Albany Corporation  
Helen Hoffman  
Murphy Favre, Inc.  
Dollar Dry Dock Investment Services, Inc  
-Northeast Brokerage Services Corp.  
First Albany Companies

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**REPRESENTATION**

Claimants, Adrianna, Frank and Marina Ferrante ("Claimants") were represented by Brian Gallagher, Esq. of Gallagher & Parnes, New York, New York.

Respondents, Helen Hoffman ("Hoffman"), Dollar Dry Dock Investment Services, Inc. ("Dollar") and Northeast Brokerage Services Corp. ("Northeast") were represented by Mark Astarita, Esq. of Gusrae, Kaplan & Bruno, New York, New York.

Respondent Murphy Favre, Inc. ("Murphy Favre") was represented by H. Richard Namba, Compliance Officer for Murphy Favre, Inc.

**CASE INFORMATION**

Statement of Claim filed:	July 6, 1995
Amended Statement of Claim filed:	October 26, 1995
Claimants' Submission Agreement Signed:	June 27, 1996
Statement of Answer filed by Helen Hoffman:	October 20, 1995
Respondent Helen Hoffman's Submission Agreement Signed:	August 8, 1996
Statement of Answer filed by Dollar Dry Dock filed:	January 8, 1996

Respondent Dollar Dry Dock did not sign a Submission Agreement as required pursuant to Section 25 of the Code of Arbitration Procedure.

Statement of Answer filed by Northeast Brokerage  
Services, Inc. :

January 8, 1996

Respondent Northeast Brokerage Service, Inc. did not sign a Submission Agreement as required pursuant to Section 25 of the Code of Arbitration Procedure.

Statement of Answer filed by Murphy Favre, Inc.:

February 1, 1996

Amended Statement of Answer filed by Murphy Favre, Inc.:

February 5, 1996

Respondent Murphy Favre, Inc. Submission Agreement signed:

February 21, 1996

### **HEARING INFORMATION**

Hearing Date/Sessions: August 8, 1996 - 2 Sessions

Hearing Location: NASD, Inc., Broad Financial Center, 33 Whitehall Street, New York, NY 10004

### **CASE SUMMARY**

Claimants alleged that they opened an investment account with Murphy Favre through Hoffman, a registered representative employed by Murphy Favre. Claimant Adrianna Ferrante ("Ferrante") alleged that she made it very clear to Hoffman that she was an inexperienced and unsophisticated investor. Ferrante also maintained that she advised Hoffman that she had no income and that her primary concern was safety of principal or preservation of capital which, while carrying small returns, would nonetheless carry little accompanying risk. Claimants alleged that Hoffman was advised that income was of secondary importance in choosing an investment vehicle. Claimants also alleged that Hoffman was given full trading authority over their account. Claimants stated that Hoffman, while employed at respondent Murphy Favre, opened an account for claimants with a \$10,000 investment in the Pilgrim Rate Trust Mutual Fund ("the Mutual Fund").

In or around October 1990, Hoffman left her employment with Murphy Favre and became a registered representative at respondent Dollar. Subsequently, claimants' account was transferred to Dollar. In March 1991, while employed by Dollar, Hoffman purchased 972.86 shares of the Pilgrim Short Term Multi-Market Income Fund ("the Fund") at \$10.04 per share for a total cost of \$9767.51. In November 1991, Hoffman purchased an additional 3940.887 shares of the Fund for an additional \$40,000, which, claimants alleged, constituted an extremely high concentration in an investment that carried greater risk than claimants' desired. As a result, claimants alleged that the Fund was not a suitable investment for claimants and that Hoffman was negligent in choosing and maintaining an excessive concentration of unsuitable investments in their account.

Dollar, Northeast and Hoffman answered stating that claimants' investment objective was income, with preservation of capital as the secondary objective. The account was opened with a \$10,000 investment in the Mutual Fund because it was designed to provide increased income with low volatility. Respondents alleged that the Mutual Fund provided claimants with increased income as desired. Moreover, respondents claimed that Hoffman discussed the nature of the investment with Ferrante prior to her investment and all claimants received the Mutual Fund's prospectus.

Pilgrim began to restructure the Prime Rate Trust Mutual Fund and Hoffman alleged that this restructuring caused her some concerns about the potential for increased volatility in the Mutual Fund.

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Hoffman stated that she discussed this concern with Ferrante who, Hoffman alleged, made it very clear that the level of income produced by her investments had to be maintained. Respondents alleged that, in order to accomplish this objective, the balance of claimants' investment was transferred to the Fund after full discussion with Ferrante.

Respondents alleged that Ferrante expressed a desire to further increase her income, and approximately eight months later, in November 1991, invested an additional \$40,000 in the Fund. In February 1993, after discussion of its relatively poor performance, respondents stated that claimants' position in the Fund was liquidated.

Respondents further alleged that the loss by claimants of their investment principal was a market risk that was known to claimants at the time the investments were made. Respondents maintained that claimants' loss was incurred by market conditions rather than by any wrongful conduct on the part of the respondents. Moreover, respondents asserted that claimants were well aware of these market conditions prior to and during the time their account remained open.

Murphy Favre maintained that claimants' funds were appropriately invested. In addition, Murphy Favre asserted that Ferrante did not give Hoffman discretionary authority over claimants' account merely by signing the opening account documentation because it was against Murphy Favre's policy to allow discretionary accounts for any reason. Also, Hoffman sold claimants only the initial \$10,000 investment in the Mutual Fund while she was employed with Murphy Favre. Murphy Favre maintained that this was not an excessive concentration in either the Mutual Fund or in a single investment given Ferrante's financial information as disclosed on the opening account application. Murphy Favre had an agreement with Dollar to provide brokerage services for Dollar which was terminated in October 1990. Murphy Favre alleged that it could not, therefore, be held liable for Hoffman's activities after October 1990 since Hoffman was no longer associated with Murphy Favre after this time. Murphy Favre maintained that it made a diligent effort to sell claimants an appropriate investment.

#### **RELIEF REQUESTED**

Claimants requested total compensation of \$20,000.00; \$14,055.51 in compensatory damages for actual losses suffered and \$5,944.49 as compensation for lost interest.

Respondents Hoffman, Dollar, Northeast and Murphy Favre requested that the claim be denied in its entirety.

#### **OTHER ISSUES CONSIDERED & DECIDED**

Respondent First Albany Companies, Inc., a nonmember firm of the NASD, declined to voluntarily submit to the jurisdiction of the NASD arbitration and was removed from the case as a named party. Respondent First Albany Corporation refused to submit to the jurisdiction of NASD arbitration on the grounds that claimants were not customers of First Albany Corporation. First Albany was also removed as a party to this matter.

Respondent Murphy Favre did not appear at the hearing on August 8, 1996. Prior to the hearing, Murphy Favre submitted a motion to dismiss based on the fact that, at the time claimants were sold the Pilgrim Short Term Multi Market Fund, respondent Hoffman was no longer a registered representative with Murphy Favre and Murphy Favre was no longer the broker-dealer of record. During the hearing, the arbitrator found no basis for liability against Murphy Favre and dismissed the Statement of Claim as to Murphy Favre.

#### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing

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submissions, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Northeast Brokerage Services, Corp., successor in interest to respondent Dollar Dry Dock Investment Service, Corp., be and hereby is liable and shall pay claimant Adrianna Ferrante the sum of \$14,555.00 in compensatory damages.

2. Respondent Helen Hoffman be and hereby is liable and shall pay claimant Adrianna Ferrante the sum of \$500.00 in compensatory damages.

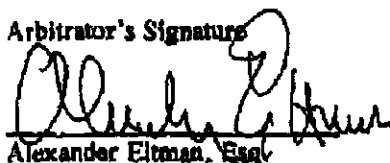
**FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the arbitrator has determined that the NASD shall retain the \$100.00 non-refundable filing fee previously deposited by claimants and has assessed the following forum fees:

2 sessions x \$300.00	= \$600.00
minus claimants \$300.00 deposit	- <u>\$300.00</u>
total outstanding	\$300.00

Respondent Northeast Brokerage Services, Corp be and hereby is liable for the sum of \$600.00 representing the total amount of the forum fees assessed. Therefore, Respondent shall pay claimant \$300.00 as reimbursement of the forum fee previously paid to the NASD. The remaining fees are payable to the National Association of Securities Dealers, Inc.

Arbitrator's Signature

  
Alexander Elman, Esq.

Alexander Elman, Esq., do hereby certify that this is my decision in the above-referenced matter.



NASD Date of Decision: September 4, 1996