

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Harvey J. Young

and

95-04170

Name of Respondent

Securities America, Inc.
Allen R. Montgomery

a National Association of
Securities Dealers, Inc.

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REPRESENTATION OF PARTIES

Harvey J. Young ("Claimant") was represented by Alexandra Coulter Cross, Esq., Harwell Howardung ("Claimant's Counsel") and Gabbert & Manner, Nashville, Tennessee.

Securities America, Inc. ("Respondent Securities") and Allen R. Montgomery ("Respondent Montgomery") were represented by Jay S. Bowen, Esq. and John Jacobson, Esq., Bowen, Wamock & Jacobson, P.L.L.C., Nashville, Tennessee.

CASE INFORMATION

The Statement of Claim was filed on or about August 30, 1995. Amended Statement of Claim was filed on or about December 7, 1995. Submission Agreement of Claimant Harvey J. Young was signed on August 21, 1995.

Statement of Answer was filed by Respondents Securities and Montgomery on or about October 24, 1995. Respondents' Statement of Answer to Amended Statement of Claim was filed on or about February 6, 1996. Submission Agreement of Respondent Securities America, Inc. was signed on October 10, 1995.

HEARING INFORMATION

The hearing was held on Tuesday, July 23, 1996 for two (2) session and Wednesday, July 24, 1996 for one (1) session in Nashville, Tennessee for a total of three (3) sessions.

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CASE SUMMARY

Claimant alleged that Respondents made unsuitable investments; breached their fiduciary duty; and made unauthorized transactions to the extent that the investments violated claimant's directive to invest funds conservatively. Claimant also alleged that Respondent Securities America, Inc. failed to properly supervise Respondent Montgomery. Specifically, Claimant alleged that respondents made the following omissions of material fact:

- ▶ failed to disclose that the annuity recommended by Montgomery had no track record and had been in business less than three years.
- failed to disclose that he would receive a commission and how much that commission would be.
- failed to disclose that the principal was guaranteed only if Mr. Young's died; and that there was an annual insurance to secure this protection.
- did not discuss strategies for allocating Mr. Young's annuity premium among various sub-accounts from which from which annuitants could select.
- did not explain the speculative nature and attendant risks of some of the funds.

In support of the above allegations, Claimant stated that over a 2 1/2 year period, Respondent Montgomery proceeded to move Mr. Young's money in and out of various funds within the Skandia family in an apparent effort to engage in an ill-formed strategy of market timing.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that Claimant was an experienced investor prior to opening the account at Securities America who explained his investment objective as income with the potential for future growth. Respondents further stated that Claimant had stated that he was not interested in fixed income options. Additionally, Respondents stated that Claimant was advised and fully understood the risks of loss inherent in the investments which he undertook and concurred in the trading, strategy implemented. Respondents also stated that Claimant decided to invest in variable annuities and the funds were allocated in a manner consistent with the Claimant's investment objectives; that Claimant received confirmations for each transaction in his account; and that Respondent Montgomery received no compensation for the transfers among subaccounts.

RELIEF REQUESTED

Claimant requested an award of:

- ▶ compensatory damages under Chapter 5 17 Florida Statutes or the well managed account measure;
- interest;
- return of all commissions, including all penalties paid by Claimant;

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- costs, including fees and expenses of expert witnesses;
- attorneys' fees pursuant to §5 17.2 1 l(6) Fla. Stat. Ann.;
- punitive damages in the discretion of the arbitrators; and
- such other relief as the arbitrators deem appropriate under the circumstances.

Respondents requested that the claims asserted against them be denied in their entirety.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Allen R. Montgomery did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to §10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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 original(s) remain on file with the NASD Regulation, Inc. Office of Dispute Resolution.

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:

1. Respondents shall be and hereby are jointly and severally liable for and shall pay to the Claimant the sum of **eight thousand five hundred dollars (\$8,500)**.
2. Each party shall bear its own costs, expenses and attorneys' fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each prehearing conference, if any. There were three (3) sessions x \$400 = \$1,200 in forum fees. Pursuant to §10332(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10332(c) of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. shall retain the non-refundable filing fee in the amount of \$120 and shall retain as forum fees the hearing

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session deposit in the amount of \$400 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant Harvey J. Young.

Pursuant to § 10333 of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. shall assess the non-refundable member surcharge in the amount of \$200 against Respondent Securities America, Inc. Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

Dated:

/s/ Joe C. Loser, Jr.

August 10, 1996

Joe C. Loser, Jr., Esq.
Public Arbitrator, Presiding Chair

/s/ Lee Cowen

August 14, 1996

Lee Cowen
Public Arbitrator

/s/ R Thomas Barksdale

August 9, 1996

R. Thomas Barksdale
Industry Arbitrator