

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

**Name of Claimants**

Rose Anne Levinson & Harriett Leavitt

vs.

Award No.  
95-04702

**Name of Respondents**

Linsco/Private Ledger Corp.  
Mark S. Winthrop

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**REPRESENTATION**

Claimant, Rose Anne Levinson, appeared pro se and was assisted by Gerald Levinson, husband of Claimant Levinson. Claimant Harriett Levinson did not appear. (Collectively "Claimants").  
For Respondents, Linsco/Private Ledger Group and Mark Winthrop ("Respondents"), David J. Freniere, Vice President and Assistant General Counsel at Linsco/Private Ledger, located in Boston, Massachusetts.

**CASE INFORMATION**

Statement of Claim was filed on October 3, 1995.  
Claimant's Submission Agreement was signed on September 29, 1995.

Joint Statement of Answer was filed by Respondent, Linsco/Private Ledger Group and Mark Winthrop on November 17, 1995.

Respondent Linsco/Private Ledger Group's Submission Agreement was signed on November 9, 1995.  
Respondent Mark Winthrop's Submission Agreement was signed on November 14, 1995.

**HEARING INFORMATION**

Hearing Date/Sessions: March 29, 1996 - 2 sessions

Hearing Location: NASD offices located at 260 Franklin Street, Boston, Massachusetts.

**CASE SUMMARY**

Claimants commenced this arbitration claim to recover the loss of 30.96% of their investments. Claimants allege that Respondents' recommendation that they invest in Managers Mortgage Intermediate, a mutual fund comprised materially of derivatives, was unsuitable for them in light of their investment objective and risk tolerance. Claimants contend that the income to be produced by this investment was

primarily for Claimant, Leavitt, Claimant Levinson's elderly mother. Claimants also allege that Respondent did not inform them that the fund consisted of derivatives. Claimants further contend that between July, 1995 and December 1995, they invested \$34,000 plus \$4,620 in income which they reinvested. Claimants state that when they liquidated their portfolio, they received only \$27,353 and later learned from a magazine article that the fund was comprised of derivatives.

Respondents deny that they acted improperly and contend that they provided full, fair and adequate disclosure to Claimants. Respondents also deny that they made representations to Claimants that were inconsistent with the disclosure documents provided to Claimants. Respondents assert twelve affirmative defenses.

Respondents maintain that the investment was consistent with Claimants' investment objective to preserve capital and for long term total returns. Respondents also maintain that Claimant wanted an investment vehicle that would provide greater return than they were getting with money market funds or bank Certificate of Deposits. Respondents further maintain that Claimants' investment in Intermediate Mortgage represented a small percentage of their net worth.

Respondents aver that Claimants' actual loss was \$2,527 and that had they held the investment for 5 to 10 years as discussed, they would not have suffered a loss because at the time of the filing of the answer, the investment was up 14%.

#### **RELIEF REQUESTED**

Claimants request an award of \$12,267.00.

Respondents request that the arbitrator dismiss the claim in its entirety and award Respondents their costs for defending this claim including reasonable attorney's fees and for such other relief that the arbitrators may deem just and proper.

#### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing, and post-hearing submission filed by Respondents, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondents are jointly and severally liable to Claimants and shall pay Claimants SEVEN THOUSAND AND TWENTY DOLLARS AND ZERO CENTS (\$7,027.00) plus interest at a rate of 5% from March 29, 1996 until paid.
- 2) All other claims for relief are denied.

#### **FORUM FEES**

Pursuant to Section 43(c) of the *Code of Arbitration Procedure*, the following Forum Fees are assessed.

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| Non-refundable Filing Fee: | \$100.00                                      |
| Hearing Session Fee:       | \$600.00 (2 sessions at \$300.00 per session) |
|                            | -----   |
| Total Fees:                | \$700.00                                      |

- 1) Claimants are assessed a \$100.00 non-refundable filing fee. Claimants are also assessed \$300.00 in forum fees. Claimants previously paid \$400.00 and owe no balance.
- 2) Respondents are jointly and severally assessed \$300.00 in forum fees.

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

Sole Public Arbitrator

Lucy J. Karl, Esq.  
Lucy J. Karl, Esq.

NASD's Date of Decision: May 15, 1996