

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Mary C. Sobon

95-04753

Name of Respondent

Katherine R. McLernon

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on October 9, 1995, Claimant Mary C. Sobon ("Claimant"), who appeared Pro Se, alleged that Respondent Katherine R. McLernon ("Respondent"), while representing Empire Financial Services, recommended that she purchase Franklin Valuemark II ("FVM") which she followed to her detriment. Claimant further alleged that Respondent misrepresented the safety and income aspects of the investments which induced her to make the purchase. Claimant contended that she is 75 years old and was sold long term investment although she would only purchase short term because of her age. Claimant further contended that as a result of the above, she has suffered a loss for which the Respondent should be held liable.

Respondent Katherine R. McLernon, through her representative counsel, Jeffrey A. Sellers, Esq., of Silverberg, Yood, Sellers & McGorry, located in Buffalo, NY, maintained that she met with Claimant on at least five occasions wherein FVM was discussed in detail. Respondent further maintained that among other items she determined Claimant's income, assets, and investments objectives in order to evaluate what investments would be suitable. Respondent contended that Claimant was very dissatisfied with her former brokerage firm, Justin Financial Services ("JFS"), and therefore sought the Respondent's advice. Respondent further contended that the advantages of the FVM investment were compared with Claimant's prior choice with JFS which included better withdrawal rights and lower sales charges. Respondent maintained that negatives of FVM were also exposed to Claimant. Respondent further maintained that Claimant continues to hold the security and has not experienced a loss. Respondent contended that as a result of the above, she should not be held liable.

RELIEF REQUESTED

Claimant Mary C. Sobon, requested \$4,792.82 in actual damages plus interest.

Respondent Katherine R. McLernon, requested that the claims of the Claimant be dismissed.

OTHER ISSUES CONSIDERED AND DECIDED

The arbitrator considered and reviewed all of the documentation submitted by the parties concerning the Respondent's Motion to Compel the Claimant to comply with her Discovery Demand. The arbitrator denied the Motion.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Donald T. Cook, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on October 13, 1995, and by the Respondent on November 28, 1995.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The Respondent Katherine R. McLernon, is liable and shall pay to the Claimant Mary C. Sobon, \$4,792.82 in actual damages.

2. The parties shall bear their respective costs.

The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc.

AFFIRMATION

I, DONALD T. COOK, ESQ., do hereby affirm, pursuant to Article 7507 of the Civil Procedure Law and Rules, that I am the individual described herein, and who executed this instrument, which is my award.


Donald T. Cook, Esq.

DATE OF DECISION: March 20, 1996