

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION

In the Matter of the Arbitration Between

Name of Claimants

Thomas J. and Harriet McKenzie

96-00716

Name of Respondents

PNC Brokerage Corp.
Jeffrey Gray

REPRESENTATION

Claimants Thomas J. and Harriet McKenzie ("Claimants") were represented by Robert A. Weinheimer, Esq., Pittsburgh, PA.

Respondents PNC Brokerage Corp. ("PNC") and Jeffrey Gray ("Gray") were represented by Thomas K. Lammert, Jr., Esq., PNC Brokerage Corp., Pittsburgh, PA.

CASE INFORMATION

The Statement of Claim was filed February 16, 1996.
Claimants' Uniform Submission Agreement was signed February 14, 1996.

The Joint Statement of Answer of Respondents PNC and Gray was filed April 18, 1996.
PNC's Uniform Submission Agreement was signed April 17, 1996.
Gray's Uniform Submission Agreement was signed April 18, 1996.

HEARING INFORMATION

Hearing Date/Sessions: November 7, 1996/two sessions

Hearing Location: Westin William Penn Hotel
Pittsburgh, PA

CASE SUMMARY

Claimants, alleged, among other things, that Respondents committed fraud, churning and made material misrepresentations. Claimants alleged that they started out with approximately \$40,000.00, and then watched their retirement nest egg dwindle to \$23,176.47 as a result of the investment advice of Respondents. Claimants alleged that Respondents earned commissions of approximately \$2,500.00. Claimants alleged that the prelude to this disaster occurred on March 8, 1994 when Gray recommended that the Claimants buy into the ACM Government Securities Fund, Inc. ("ACM Fund"). Claimants alleged that as many first-time investors, Claimants thought they had "good" investment knowledge but four months into their endeavor into the market, they realized their knowledge was "limited" and so

notified Respondents on March 17, 1993. Claimants alleged that Gray was informed of the Claimants' ages and Mr. McKenzie's impending retirement in May of 1995. Claimants alleged that Gray was specifically aware of Claimants' desire for a low risk, stable income. Claimants alleged that documentation provided by Respondents confirmed uniform income at \$306.00 a month and, in fact, initially the ACM Fund provided income in excess of \$300.00 a month. However, Claimants alleged that the investment which was purchased at \$11 in March of 1994 had dwindled in market value to \$8 by December of 1994. Claimants alleged that the most destructive aspect of the claim occurred under the guise of a "year-end swap" when Gray recommended on December 10, 1994 that the Claimants sell the ACM Fund and purchase ACM Spectrum Fund to realize a tax loss. Claimants alleged that Gray did not disclose the material risks involved in the transfer from the ACM Fund to the ACM Spectrum Fund. Claimants alleged that Gray exposed Claimants to a higher risk factor, which was not disclosed, in the ACM Spectrum Fund. Claimants alleged that following two months of the quoted monthly income, the ACM Spectrum Fund decreased its dividend resulting in a decrease in monthly benefits from \$309.00 to \$249.00. Claimants alleged that Respondents induced Claimants to authorize excessive trading in their account which resulted in financial benefits to Respondents. Claimants alleged that Respondents breached their fiduciary duty, misrepresented the risk of the investments they persuaded Claimants to authorize and therefore, committed common law fraud.

Respondents denied the allegations of wrong doing asserted in the Statement of Claim. Respondents maintained that Claimants came to PNC Securities ("PNCSC") in November 1992 with approximately \$40,000 that he wished to invest in Nuveen PA. Inv. Quality Municipal Fund. Respondents maintained that Gray opened an account for Mr. McKenzie (Account #22625882) and made the purchase. Respondents maintained that at the time of opening the account, Mr. McKenzie indicated on the Account Application that he was an attorney with annual income between \$50,000.00 and \$100,000.00 and that his investment knowledge was "good". Respondents maintained that Mr. McKenzie also indicated that his investment objectives were "income" and "tax exempt income". Respondents maintained that Mr. McKenzie told Gray that he was familiar with this type of investment, i.e., a closed-end tax-exempt bond fund. Respondents maintained Mr. McKenzie was informed that the Nuveen Fund paid a dividend that was not fixed and its value fluctuated with the market. Respondents maintained that in February 1993, Mr. McKenzie directed Respondents to sell 250 shares of Nuveen for a profit of \$396.80. Respondents maintained that at the same time, Mr. McKenzie transferred his remaining 2,320 shares of Nuveen to a new joint account with Mrs. McKenzie (Account #22691612). Respondents maintained that in March 1994, Claimants sold the 2,230 shares of Nuveen for a \$2,480 profit. Respondents maintained that Claimants told Gray that they now wanted higher monthly income. Respondents maintained that Gray and Claimants discussed bond funds again and Claimants decided to invest in a taxable closed-end bond fund, the ACM Fund. Respondents maintained that Claimants authorized the purchase of 3,360 shares for Claimants' account.

Respondents maintained that in early December 1994, Gray contacted Claimants about the status of their account. Respondents maintained that Claimants were aware from statements that they received that the fund was down. Respondents maintained that Gray discussed this with Claimants and suggested that they could recoup some of their loss through a tax loss. Respondents maintained that Claimants decided to sell the ACM Fund shares for a loss of \$8,400.00. Respondents maintained that Gray discussed investment options for the proceeds of the sale with Claimants but Claimants were not interested in individual bonds because the monthly income was below what they desired. Respondents maintained that Gray researched several closed-end bond funds for Claimants but Claimants stated that they wanted monthly income in excess of \$300.00. Respondents maintained that Gray found the ACM Spectrum Fund, which would pay Claimants a monthly dividend of \$309.00 based on the then in effect dividend rate of \$.08/share. Respondents maintained that Claimants instructed Gray to make the purchase and

Claimants received a confirmation of this purchase. Respondents maintained that on or about February 21, 1995, the ACM Spectrum Fund reduced its monthly dividend to \$.0625/share. Respondents maintained that Claimants then decided in March 1995 to sell their shares for a loss of \$5,390.67. Respondents maintained that Claimants were never told by Gray that a bond fund would produce a fixed dividend or that the value of shares in a bond fund would not fluctuate. Respondents maintained that Claimants' prior experience with bond funds established that they were aware that the dividends paid by bond funds fluctuate. Respondents further maintained that there were no violations of Section 10-b(5) claim nor was Respondents activities fraudulent. Respondents maintained that any loss suffered by Claimants were the result of Claimants' own investment decisions.

RELIEF REQUESTED

Claimants requested relief in the amount of \$14,710.16 plus attorney's fees and costs \$ 2,796.65.

Respondents requested that Claimants' request for damages be denied.

OTHER ISSUES CONSIDERED & DECIDED

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

1. That the Statement of Claim is denied.
2. That each party shall pay its own costs and expenses.
3. That any relief not specifically addressed herein is denied.

FORUM FEES

Pursuant to Rule 10332(c) (formerly Section 43) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

2 sessions x \$400.00 = \$800.00

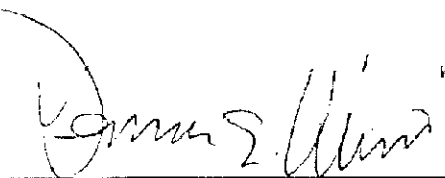
Forum Fees are assessed to Claimants and Respondents in equal amounts. Claimants are to receive credit for the \$400.00 hearing session deposit previously submitted to the NASD Regulation, leaving no further assessment due from Claimants. Respondents, jointly and severally, have a net assessment due to the NASD Regulation of \$400.00.

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

DATE

CONCURRING ARBITRATORS' SIGNATURES

Nov. 15, 1996



Dennis E. Minni, Chairperson
Public Arbitrator

Jason C. Blackford
Public Arbitrator

Willis E. Adams, II
Industry Arbitrator

Date Decision Served by NASD, Regulation:

December 11, 1996

DATE

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Public Arbitrator

11/15/96

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Public Arbitrator

Jason C. Blackford
Public Arbitrator

12-9-96



Willis E. Adams, II
Industry Arbitrator

Date Decision Served by NASD, Regulation: December 11, 1996