

N.A.S.D. REGULATION, INC.
AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimants

Robert A. Murphy;
Robert A. Murphy, Trustee for Robert M. Murphy; and
Robert A. Murphy, Trustee for Lauren Murphy.

96-00890

Name of Respondents

Everen Securities, Inc., f/k/a Kemper Securities, Inc.;
Sheldon H. Schumaker; and
Richard Renner

REPRESENTATION

For Claimants: Robert A. Murphy; Robert A. Murphy, Trustee for Robert M. Murphy; and Robert A. Murphy, Trustee for Lauren Murphy ("Murphy") were represented by Erwin Cohn, Esq., of Cohn & Cohn, located in Chicago, Illinois.

For Respondents: Everen Securities, Inc., f/k/a Kemper Securities, Inc. ("Everen"); Sheldon H. Schumaker ("Schumaker"); and Richard Renner ("Renner") were represented by Renan I. Sugarman, Esq., of Everen Securities, Inc., located in Chicago, Illinois.

CASE INFORMATION

Statement of Claim filed: February 28, 1996.

Claimant Robert A. Murphy's Submission Agreement signed on: February 22, 1996.

Claimant Robert M. Murphy's Submission Agreement and Lauren Murphy's Submission Agreement signed on: March 14, 1996 by Robert A. Murphy

Statement of Answer filed by Respondents on: July 16, 1996.

Respondent Everen's Submission Agreement signed on: July 16, 1996 by Renan I. Sugarman, Vice President and Senior Counsel, Everen Securities, Inc.

Respondent Schumaker and Renner did not file executed submission agreements.

HEARING INFORMATION

Pre-Hearing Conference: May 14, 1998 before one arbitrator.

Hearing Dates/Sessions: June 23, 1998 for two sessions; and
June 24, 1998 for two sessions.

Hearing Location: Cleveland, Ohio.

CASE SUMMARY

Murphy alleged that respondents Schumaker and Renner, while employed by or acting as agents for respondent Everen, fraudulently induced him to purchase investments which were unsuitable given his investment experience, education and account objectives. Murphy specifically alleged as follows:

1. Murphy initially opened a custodial account for Robert M. Murphy under the Ohio Uniform Transfer to Minors Act in September 1990. Subsequently, a custodial account was opened for Lauren Murphy and an individual account for himself. Murphy was self-employed by his own general contracting firm and was unexperienced in the stock market;

2. Murphy explained that because the accounts were for his retirement and the education of his children, the funds were not to be placed at risk. He expected the funds to be placed in safe, prudent vehicles. Murphy further advised that because of his lack of experience in the stock market and lack of time to manage the accounts, the individual respondents should take over management of the accounts, creating a fiduciary relationship of respondents to Murphy;

3. In addition, the respondents failed to explain and disclose the inherent risks of the investment made in the common stock of American International Petroleum for all accounts, an investment which was unsuitable for the claimants and were not the low risk ones specified by the arbitrators. Respondents also failed to obtain claimant's approval before making each trade.

Based upon these allegations, the claimants asserted claims for unsuitability; misrepresentations and omissions; and breach of fiduciary duty.

Respondents denied the material allegations of the claim, alleging that Murphy was a successful businessman who anticipated investing \$100,000 to \$150,000 a year and who was a risk taker who

rejected any conservative strategies shown to him. It was further alleged that Murphy used the two custodial accounts of his children to facilitate his risky investment strategies. Other allegations in defense of the claim were:

1. Murphy constantly sought, received and acted on investment advice received from people he knew other than respondents;
2. Approximately one year after the account was opened and as a result of the advice received from others, Murphy completely changed his insistence in diversification and wanted to concentrate all his funds in one security;
3. Murphy began placing orders for over-the-counter stocks and discussing short-term trading strategies, including investment in commodity funds;
4. As a result of his discussions with friends and in pursuit of his "home run" strategy, Murphy eventually concentrated his entire portfolio in the stock of American International Petroleum; and
5. This strategy was completely Murphy's decision and he indicated that he would make the purchases elsewhere if respondents did not execute them, rejecting the conservative strategy Renner suggested.

In addition, respondents asserted several affirmative defenses.

RELIEF REQUESTED

Claimants requested entry of an award against respondents for compensatory damages of approximately \$112,952.00; punitive damages in the amount of three times the sum of compensatory damages or \$338,856.00; interest for 24 months at 8%, compounded annually on \$18,072.00; costs and expenses of approximately \$4,000.00; reasonable attorneys' fees; and for such other relief as the panel deemed appropriate.

Respondents requested that the claims be dismissed and denied, and that the record of this arbitration be expunged from their records.

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.

Respondents Schumaker and Renner did not file with the NASD Regulation, Inc., Office of Dispute Resolution a properly executed submission to arbitration but are required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and are bound by the determination of the arbitration panel on all issues submitted.

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. The statement of claim is dismissed with prejudice and denied in the entirety;
2. The undersigned arbitrators hereby order the expungement of this arbitration case from the Central Registration Depository ("CRD") of the National Association of Securities Dealers, Inc. for the record of Sheldon H. Schumaker (CRD number 1647705) and Richard Renner (CRD number 1553346);
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
3. Any relief not specifically awarded is hereby denied.

OTHER COSTS

Pursuant to Rule 10319, Claimant Robert A. Murphy is liable for and shall pay to NASD Regulation, Inc. the sum of \$1,000.00 for the postponement of the hearing dates of November 4, 5 and 6, 1997.

NASD Regulation, Inc. shall retain the \$750.00 postponement fee paid by Claimant Robert A. Murphy for the postponement of the June 17 and 18, 1997 hearing dates.

Pursuant to Rule 10333 of the Code, Respondent Everen Securities, Inc., f/k/a Kemper Securities, Inc. has paid to NASD Regulation, Inc. the \$350.00 member surcharge previously invoiced.

FORUM FEES

Pursuant to Rule 10332[c] of the Code of Arbitration Procedure, the following Forum Fees are assessed: One pre-hearing x \$300.00 = \$300.00; Four hearing sessions x \$750.00 per session = \$3,000.00; Total forum fees = \$3,300.00.

NASD Regulation, Inc. shall retain the \$200.00 claim filing fee and, as forum fees, the \$750.00 hearing session deposit previously paid by the claimants. The claimants, Robert A. Murphy; Robert A. Murphy, Trustee for Robert M. Murphy; and Robert A. Murphy, Trustee for Lauren Murphy are also liable for and shall pay to NASD Regulation, Inc. the sum of \$2,550.00 as forum fees.

Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution

Concurring Arbitrators' Signatures
Name

Date

/s/ Robert C. Devlin, Esq.
Robert C. Devlin, Esq.
Public Arbitrator
Chairperson

August 20, 1998

/s/ Thaddeus J. Shalek
Thaddeus J. Shalek
Public Arbitrator

August 18, 1998

/s/ Leslie J. Filson
Leslie J. Filson
Industry Arbitrator

August 18, 1998

For NASD Regulation, Inc. Use Only
Date of Decision: August 20, 1998