

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

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Marjorie Truitt

96-01748

Name of Respondent

Gibraltar Securities Co.

REPRESENTATION

For claimant Marjorie Truitt ("claimant") appeared Morgan W. Bentley, Esq., a sole practitioner located in Newark, New Jersey.

For respondent Gibraltar Securities Co. ("respondent") appeared Matthew Farley, Esq. and John E. Jenkins, Esq. of the law firm of Shanley & Fisher located in New York, New York.

CASE INFORMATION

Statement of Claim filed: April 22, 1996.

Amended Statement of Claim filed: May 2, 1996.

Claimant's Submission Agreement signed on: April 12, 1996.

Statement of Answer filed by respondent on: July 31, 1996.

Respondent's Submission Agreement signed on: July 25, 1996.

HEARING INFORMATION

Hearing Dates/Sessions:	January 28, 1997	two sessions
	January 29, 1997	two sessions

The hearings were conducted at Club Quarters located at 52 Williams Street New York, New York.

CASE SUMMARY

Claimant alleged that she opened an account with respondent which sold her unsuitable securities. Claimant further alleged that in selling these unsuitable securities to her, respondent breached its fiduciary duty to promote and to abide by the just and equitable principles of trade and to honor high standards of commercial honor and integrity. Claimant also alleged that respondent used a marketing and sales campaign aimed at her which pushed Collateralized Mortgage Obligation ("CMO") products and RJR Nabisco Notes. Claimant contended that the campaign glossed over the risks to principle but pushed the income and relative safety aspects of the aforementioned investments. Claimant further contended that prior to the purchase of unsuitable investments by respondent and by PaineWebber, she had had a sizeable municipal bond portfolio and had a low turnover rate.

Claimant contended that the portion of her assets which respondent converted to CMO investments, RJR Nabisco Notes and Municipal Development Authority Bonds earned it substantial fees, trading profits and commissions and subjected her assets to risks which were unsuitable, misrepresented or omitted. Claimant further contended that respondent's sole motivation for purchasing these securities was its own profit. Claimant also contended that as a result of the above, she has suffered losses for which the respondent should be held liable.

Respondent maintained that claimant maintained an account with it from August 1990 through at least the end of 1991 and that investments made during this period were primarily municipal bonds. Respondent further maintained that its broker, Mr. King, recommended that claimant purchase certain mortgage backed securities and corporate bonds, including RJR.

Respondent contended that the basic risk in mortgage backed securities and municipal bonds, like those recommended to claimant, is fluctuations in interest rates. Respondent further contended that unlike municipal bonds, mortgage backed securities represent a pool of mortgages and thus have the underlying safety of many mortgages. Respondent also contended that the FNMA and FHLMC are mortgage backed securities which have the moral obligation of the United States federal government and thus are considered good investments. Respondent asserted that, in contrast, municipal bonds are dependent on a single borrower, the issuing municipality. Respondent maintained that claimant's urging that federally backed CMO's and/or investment grade corporate bonds were in some manner unsuitable is totally without merit.

Respondent maintained that claimant's investment performance was better as a result of the investments. Respondent went on to maintain that RJR bonds, municipal bonds and mortgage backed securities remained in the account at the time the account was transferred out. Respondent further maintained that in 1994, all fixed income securities were adversely affected due to back-to-back increases by the Federal Reserve Board. Respondent also maintained that claimant's proposed ideal portfolio of municipal bonds would have been negatively affected in this market. Respondent contended that the losses claimant experienced were due to market forces beyond its control. Respondent further contended that claimant chose to sell her investments after moving her account but that had she held the securities the losses would not have been so great since the market value of the securities recovered subsequent to her sale.

Respondent denied all allegations that it sold her CMO's or investment grade corporate bonds in an effort to achieve higher commissions or to gain other inappropriate incentives. Respondent further denied that it used a targeted program to sell the investments in dispute to claimant. Respondent maintained that as a result of the above, it should not be held liable.

RELIEF REQUESTED

Claimant requested \$37,092.00 in actual damages, interest, attorney's fees, costs, forum fees, and punitive damages arising out of respondent's unsuitable advice, fraud, misrepresentation, omission, negligence, gross negligence, breach of fiduciary duty and breach of contract.

Respondent requested that the claims be dismissed in their entirety.

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. The claims of claimant Marjorie Truitt against respondent Gibraltar Securities, Inc. are denied in their entirety.
2. The parties shall bear the respective costs and attorney's fees.
3. All other claims are denied.

FORUM FEES

Pursuant to Section 10332c of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$120.00 non-refundable filing fee previously deposited by claimant and have assessed the following forum fees:

4 sessions x \$400.00	= \$1,600.00
Minus claimant's \$400.00 deposit	= \$ 400.00
total outstanding	= \$1,200.00

Claimant Marjorie Truitt be and hereby is liable for the sum of \$800.00 representing one-half of the total amount of forum fees assessed. Claimant previously deposited \$400.00 with NASD Regulation, Inc.. Therefore, claimant shall pay to NASD Regulation, Inc. \$400.00 in satisfaction of forum fees.

Respondent Gibraltar Securities, Inc. be and hereby is liable for the sum of \$800.00 representing one-half of the total amount of forum fees assessed. Therefore, respondent shall pay to NASD Regulation, Inc. \$800.00 in satisfaction of forum fees.

ARBITRATORS' SIGNATURES

I, Richard Lerner, Esq. do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Richard E. Lerner

Richard Lerner, Esq.
Public Chairperson

I, Julian Hess, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Julian Hess
Public Panelist

I, Harry Lundgren, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Harry Lundgren
Industry Panelist

Date of Decision: March 14, 1997

ARBITRATORS' SIGNATURES

I, Richard Lerner, Esq. do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Richard Lerner, Esq.
Public Chairperson

I, Julian Hess, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Julian Hess
Julian Hess
Public Panelist

I, Harry Lundgren, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Harry Lundgren
Industry Panelist

Date of Decision: March 14, 1997

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Richard Lerner, Esq.
Public Chairperson

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Julian Hess
Public Panelist

I, Harry Lundgren, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.



Harry Lundgren
Industry Panelist

Date of Decision: March 14, 1997