

NASD REGULATION, INC. AWARD

In the Matter of the Arbitration Between

Name of Claimant

T. Vanessa Robinson, Executor for
Estate of Ruth M. Maxwell

vs.

Case No.
96-01886

Names of Respondents

Buttonwood Securities, Inc.
Edward A. McKay, Jr.

REPRESENTATION

For Claimant T. Vanessa Robinson ("Claimant") appeared Susan N. Perkins, Esq., a private practitioner located in New York, New York.

Respondent Buttonwood Securities, Inc. ("Buttonwood") did not enter an appearance in this matter.

For Respondent Edward A. McKay, Jr. ("McKay") appeared Mark M. Aarons, Esq. of the firm Aarons & Contillo, L.L.P. located in New York, New York.

CASE INFORMATION

Claimant's Statement of Claim was filed on May 30, 1996.
Claimant's Submission Agreement was signed on May 24, 1996.

Respondent Buttonwood failed to file a Statement of Answer and a properly executed Submission Agreement.

Respondent McKay filed a Statement of Answer on July 26, 1996.
Respondent McKay's Submission Agreement was signed on July 17, 1997.

HEARING INFORMATION

Hearing Date/Sessions: November 25, 1997 - Two Sessions

The hearing was conducted at the offices of NASD Regulation, Inc., located in New York, New York.

CASE SUMMARY

Claimant alleged that she was a close friend and relative of Ruth M. Maxwell ("Maxwell"), and she was named beneficiary as well as nominated executor under Maxwell's will, but had no knowledge of the bequest or the nomination prior to Maxwell's death on April 3, 1995. Claimant also alleged that, on or about February 24, 1994, Maxwell invested \$80,000.00, her proceeds from her husband's life insurance policy, with Respondent Buttonwood as broker-dealer and Respondent McKay as account executive. Claimant further alleged that McKay placed the entire \$80,000.00 in Capital Income Fund. Claimant asserted that McKay knew the limited personal financial circumstances of Maxwell because he had prepared income tax returns for Maxwell and her husband for many years, and, therefore, McKay's recommendation to invest Maxwell's money in the highly speculative Capital Income Fund was unsuitable.

Claimant also asserted that, in January or February 1995, Respondent McKay caused a Capital Income Fund portfolio statement to be transmitted to Maxwell misrepresenting an increase in the value of her interest in Capital Income Fund to \$81,066.67. Claimant further asserted that, in fact, Capital Income Fund had little or no value, and Maxwell's interest was worth either nothing or far less than the amount reported. Claimant contended that McKay engaged in a fraudulent and deceptive scheme, whereby he sponsored several limited partnerships, including Capital Income Fund. Claimant alleged McKay swept the funds of later innocent purchasers similar to Maxwell whom he induced to invest, in order to make payments of so-called "interest" to earlier investors.

Claimant also contended that the misconduct, acts, and practices of Respondents Buttonwood and McKay, constituted fraud and misrepresentation under federal securities and common law. Claimant further contended that Respondents Buttonwood and McKay engaged in a continuous period of racketeering activity for more than one year. Claimant alleged that Respondents Buttonwood and McKay breached and violated their fiduciary duties and industry standards by inducing unsuitable transactions, making material misrepresentations and omitting material information. Claimant also alleged that the failure of Respondents Buttonwood and McKay to use due diligence to determine and monitor Maxwell's investment objectives, and their failure to explain the risky nature of the limited partnership interest sold to Maxwell constituted a breach of fiduciary duty at common law by Respondents Buttonwood and McKay.

Respondent McKay asserted his fifth amendment rights and refused to answer the separate allegations contained in the Statement of Claim.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$81,066.67; punitive damages in a just and equitable amount; treble damages in the amount of \$162,133.34; an award of possible additional losses discovered and proved in the arbitration; interest at nine percent from the date of Maxwell's investment on February 24, 1994 until the award is paid; attorneys' fees; forum fees; reimbursement of the non-refundable filing fee; and the costs of this proceeding.

Respondent McKay requested that Claimant, and each Respondent on any cross-claim or counterclaim, be put to their proofs as to each and every allegation contained in their respective Statements of Claim.

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 original remains on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, and post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Buttonwood and McKay be and hereby are jointly and severally liable and shall pay to Claimant the sum of \$83,000.00, inclusive of all costs and filing fees, plus interest at 9% from the date of the filing of the notice of claim.
2. Respondents be and hereby are jointly and severally liable and shall pay Claimant the sum of \$750.00 to reimburse Claimant for the hearing session deposit previously deposited with NASD Regulation, Inc.
3. All other requests for relief are hereby denied.

FORUM FEES

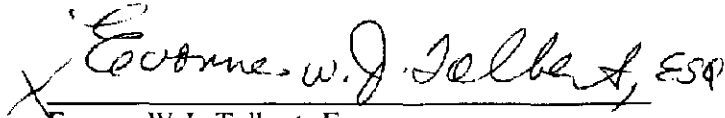
Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$200.00 non-refundable filing fee previously submitted by the Claimant and have assessed the following forum fees:

2 Hearing Sessions x \$750.00 = \$1,500.00

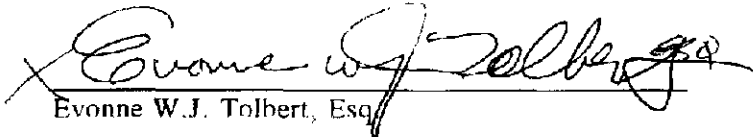
1. Respondents be and hereby are jointly and severally liable for the sum of \$1,500.00, representing the total amount of forum fees assessed. Claimant previously deposited \$750.00 with NASD Regulation, Inc. Respondent shall pay Claimant the sum of \$750.00 as provided in the "Award" section above and shall remit the balance of \$750.00 to NASD Regulation, Inc.
2. Respondent Buttonwood be and hereby is liable and shall pay the sum of \$350.00 for the Member Surcharge. Respondent Buttonwood has not submitted the sum of \$350.00, and, therefore, owes the Member Surcharge.
3. Respondent McKay be and hereby is liable and shall pay the sum of \$750.00 for a postponement fee. Respondent McKay has not submitted the sum of \$750.00, and, therefore, owes the postponement fee.

Fees are payable to NASD Regulation, Inc.

ARBITRATORS' SIGNATURES


Evonne W.J. Tolbert, Esq.
Public Arbitrator - Chairperson

I, Evonne W.J. Tolbert, 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.


Evonne W.J. Tolbert, Esq.

Howard L. Mandell, Esq.
Public Arbitrator

I, Howard L. Mandell, 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.

Howard L. Mandell, Esq.

Gene Meisner
Industry Arbitrator

I, Gene Meisner, 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.

Gene Meisner

DATE OF DECISION: MARCH 30, 1998

ARBITRATORS' SIGNATURES

Evonne W.J. Tolbert, Esq.
Public Arbitrator - Chairperson

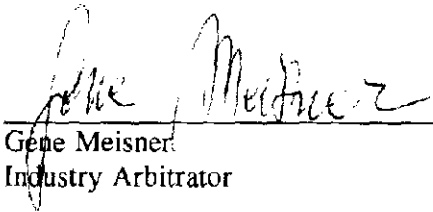
I, Evonne W.J. Tolbert, Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules that I am the individual described herein and who executed this instrument which is my award.

Evonne W.J. Tolbert, Esq.

Howard L. Mandell, Esq.
Public Arbitrator

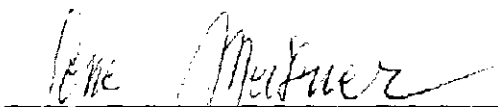
I, Howard L. Mandell, Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules that I am the individual described herein and who executed this instrument which is my award.

Howard L. Mandell, Esq.



Gene Meisner
Industry Arbitrator

I, Gene Meisner, 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.



Gene Meisner

DATE OF DECISION: MARCH 30, 1998

ARBITRATORS' SIGNATURES

Evonne W.J. Tolbert, Esq.
Public Arbitrator - Chairperson

I, Evonne W.J. Tolbert, 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.

Evonne W.J. Tolbert, Esq.

X Howard L. Mandell
Howard L. Mandell, Esq.
Public Arbitrator

I, Howard L. Mandell, 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.

X Howard L. Mandell
Howard L. Mandell, Esq.

Gene Meisner
Industry Arbitrator

I, Gene Meisner, 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.

Gene Meisner

DATE OF DECISION: March 30, 1998