

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Carmen Cossentino

96-02520

Name of Respondents

Alex Brown & Sons, Incorporated
Jon D. Kurzmann

REPRESENTATION

Claimant Carmen Cossentino ("Claimant") was represented by David H. Zimmer, Esq., Potomac, MD.

Respondents Alex Brown & Sons, Incorporated ("Alex Brown") and Jon D. Kurzmann ("Kurzmann") were represented by Daniel J. Donovan, Esq., Alex Brown & Sons, Incorporated, Baltimore, MD.

CASE INFORMATION

The Statement of Claim was filed June 12, 1996.

Claimant's Uniform Submission Agreement was signed May 5, 1996.

The Joint Statement of Answer of Alex Brown and Kurzmann (collectively "Respondents") was filed October 30, 1996.

Alex Brown's Uniform Submission Agreement was signed October 28, 1996.

Kurzmann's Uniform Submission Agreement was signed October 30, 1996.

HEARING INFORMATION

Hearing Dates/Sessions: June 11, 1997/two sessions
 June 12, 1997/two sessions
 July 2, 1997/two sessions

Hearing Location: Tremont Hotel
 Baltimore, MD

CASE SUMMARY

Claimant alleged, among other things, that Respondents induced her to authorize transactions in unsuitable securities through the use of fraudulent nondisclosure and negligent misrepresentations. Claimant alleged that prior to transacting business with Respondents, as an unsophisticated investor and recently divorced, she invested in investment grade quality or better municipal bonds, in the shares of income oriented open end mutual funds and certificates of deposits. Claimant alleged that she approached Respondents in March 1991 to inquire about Nuveen Tax Free Investments ("Nuveen") based on a recommendation by

a friend as she wanted to see about making a small investment if Respondents' research showed that it looked promising. Claimant further alleged that Respondents indicated that they knew nothing about Nuveen but would research it and get back to Claimant. Claimant further alleged that Respondents called her in April 1991 and excitedly solicited Claimant to purchase Nuveen which was described as equivalent to purchasing a State of Maryland AAA rated tax free bond, only with higher interest. Claimant asserted that her investment objective was tax free income and preservation of principal. Claimant alleged that over the next few months Respondents continued to purchase Nuveen and Claimant, who originally wished to purchase one Nuveen investment found her statement indicated seven or more Nuveen investment quotations. Claimant alleged that Respondents explained the statement by reassuring Claimant that Nuveen was as safe as Maryland AAA rated tax free bonds.

From August 1991 through January 1992, Claimant alleged that Respondents persuaded her to purchase several different issues of National Tax Exempt Unit Trusts ("National"). Here again, Claimant claimed Respondents referred to these investments as identical to an investment in State of Maryland AAA rated tax free bonds but paying an even higher rate of interest than Nuveen. When Claimant inquired as to the amount of commissions, Claimant asserted that Respondents informed her that similar to an investment in State of Maryland AAA rated tax free bonds, the commissions were built into the total transaction charges and would be equal to or less than commissions charged to purchase or sell a State of Maryland AAA rated tax free bond. When Claimant asked why her statements indicated that her investment principal was decreasing, Claimant alleged that Respondents misrepresented that the individual values quoted did not reflect current prices and that actually Claimant's investments were significantly higher than that quoted on the monthly statements.

Claimant alleged that Alex Brown failed to adequately supervise Kurzmann in the management of her account. Claimant alleged that Respondents' actions amounted to fraudulent nondisclosure and negligent misrepresentation which breached their fiduciary duty to Claimant.

Respondents denied all allegations of wrong-doing as asserted in the Statement of Claim. Respondents maintained that Kurzmann, who had prior experience with Nuveen products, generally described Nuveen to Claimant but did not, at any time, equate the purchase of individual bonds with the purchase of units of Nuveen Unit Trust. Respondents maintained that as Claimant inquired about available investments, she stressed her desire to maximize the monthly payment she could expect to receive. Respondents further maintained that although Claimant was presented with alternatives, she frequently chose to invest in Nuveen. Respondents maintained that on several occasions Claimant informed Respondents that she preferred Nuveen Unit Trusts to bonds because Unit Trusts paid her more on a monthly basis and that her primary investment objective was income. Respondents also maintained that Claimant occasionally invested in individual bonds and mutual funds in addition to the Nuveen Unit Trust. Respondents contended that each and every investment decision regarding Claimant's account was made by Claimant in advance of the execution of the order. Over all, Respondents asserted that Claimant had a total return in excess of \$200,000.00 on the average equity in her account of approximately \$550,000.00 during the sixty-five months she maintained an account with Respondents.

Respondents raised the affirmative defenses of a bar to the claims based on applicable statutes of limitation; no private right of action for alleged violations of rules and regulations of self-regulatory organizations; lack of damages; ratification, estoppel and waiver; statement of claim fails to state a claim upon which relief can be granted and lacks specificity to support a fraud claim. Respondents also maintained that the claims asserted are vague and ambiguous and that Claimant at all times was in control of her account.

RELIEF REQUESTED

Claimant requested relief not to exceed \$100,000.00 plus pre-award interest, punitive damages and reasonable attorney's fees.

Respondents requested that the claims asserted by Claimant be dismissed in their entirety and all administrative costs associated with this arbitration be assessed to Claimant.

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 the claim for punitive damages is denied.
3. That each party shall bear its own costs and expenses including attorney's fees.
4. That any and all relief not specifically addressed herein is denied.

FORUM FEES

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

6 sessions x \$500.00 = \$3,000.00

Forum Fees are assessed at \$1,500.00 to Claimant and \$1,500.00 to Respondents, jointly and severally. Claimant shall receive credit for the \$500.00 hearing session deposit previously submitted to the NASD Regulation, leaving a net assessment due from Claimant of \$1,000.00. Respondents have a net assessment due of \$1,500.00.

Pursuant to Rule 10333, Respondent Alex Brown has a member surcharge of \$300.00. Respondent Alex Brown shall receive credit for the \$300.00 member surcharge deposited, leaving no further surcharge due.

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


DATE

CONCURRING ARBITRATORS' SIGNATURES

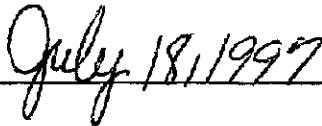
Marvin Elster, Presiding
Public Arbitrator

Dickee M. Howard
Public Arbitrator

7/14/97


M. Teri Ranieri
Industry Arbitrator

Date Decision Served by NASD Regulation:



DATE

July 14, 1997

CONCURRING ARBITRATORS' SIGNATURES



Marvin Elster, Presiding
Public Arbitrator

Dickee M. Howard
Public Arbitrator

M. Teri Ranieri
Industry Arbitrator

Date Decision Served by NASD Regulation:

July 18, 1997

DATE

CONCURRING ARBITRATORS' SIGNATURES

Marvin Elster, Presiding
Public Arbitrator

7/14/97

Dickee M. Howard
Dickee M. Howard
Public Arbitrator

M. Teri Ranieri
Industry Arbitrator

Date Decision Served by NASD Regulation:

July 18, 1997