

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Bruce Babula, as Custodian for David Babula

96-03299

Name of Respondents

Janney Montgomery Scott Inc.
William J. Pearce

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers Regulation, Inc. on August 1, 1996, claimant Bruce Babula, as custodian for David Babula ("claimant"), who appeared Pro Se, alleged that in July, 1993 respondent William J. Pearce ("Pearce"), a broker of respondent Janney Montgomery Scott, Inc. ("Janney Montgomery") persuaded him to sell his zero coupon bonds and Eaton Vance National Municipals Fund shares which were held in custodial account #WB07-7665. Claimant further maintained that on July 20, 1993, September 13, 1993 and January 18, 1994 respectively, Pearce advised him to purchase the following mortgage backed securities from "tranches": (a) 6000 Fedl Natl Mtg Assn Remic Tr 1993-76, (b) 15,000 Fedl Natl Mtg Assn Remic 1993 Ser 97 and (c) 4000 Fedl Hm Ln Mtg Corp Multcl Remic 1592. Claimant also maintained that Pearce promised a return of principal by 1997. Claimant maintained that Pearce was aware of his custodial goals and risk tolerance, and knew that the funds were earmarked to pay educational expenses on a predetermined time scale. Claimant averred that he would not have opted to switch investments if he had not been assured of the safe and timely return of principal.

Claimant asserted that as time passed, he noticed that the principal return rate was "at marked variance with what had been promised" and in 1996, after consulting with another investment firm, discovered that the investments were high-risk tranches projected as eight to twelve year bonds as of 1996. Claimant also asserted that Janney Montgomery should adhere to its own timetable and purchase the bonds from him, as it maintains that the securities purchased in 1993 are three to five year bonds.

Respondents Janney Montgomery Scott, Inc. and William J. Pearce ("respondents") through their representative and counsel, Paula D. Shaffner, Esq., of the law firm Saul, Ewing, Remick & Saul, located in Philadelphia, Pennsylvania maintained that in 1993 claimant's account was reassigned to broker William J. Pearce. Respondents further maintained that claimant understood and was concerned about the effect of interest rates on the value of his investments. Respondents also maintained that claimant specifically instructed Pearce to watch the market and recommend when the investments should be sold. Respondents asserted that at a point in time when interest rates made it attractive to sell claimant's Eaton Vance securities and the long-term zero coupon bonds, they were sold. Respondents further asserted that claimant agreed to the sale of the securities and the funds were placed in a money market account.

Respondents also asserted that claimant later agreed to the purchase of Collateralized Mortgage Obligations ("CMOs") for the account, as this type of investment had shorter terms of maturity than his previous investments. Respondents maintained that at the time of purchase, the CMOs were stated to have a three to five year average life, two of which were immediate paying bonds. Respondents further maintained that the estimated date of principal return on the CMOs changed from that expected at the time of purchase, and indicated that this fluctuation is a common risk associated with CMOs. Respondents also maintained that this risk was fully disclosed to claimant. Respondents contended that they are not guarantors of investments and that claimant has no legal or factual basis on which to hold them liable for any alleged losses.

RELIEF REQUESTED

Claimant Bruce Babula, as custodian for David Babula, requested \$1,900.00 in actual damages or that respondents immediately purchase the bonds at par; \$1,000 representing lost opportunity, plus costs.

Respondents Janney Montgomery Scott, Inc. and William J. Pearce requested an award in their favor and against claimant.

AWARD

Pursuant to Section 10302 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Jack F. Marlow, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the claimant on November 14, 1996, by respondent Janney Montgomery Scott, Inc. on September 18, 1996 and by respondent William J. Pearce on September 19, 1996.

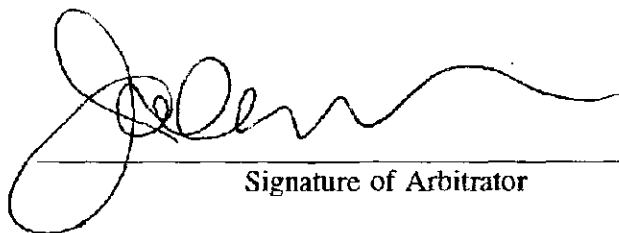
And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of Bruce Babula, as custodian for David Babula against respondents Janney Montgomery Scott, Inc. and William J. Pearce are dismissed in their entirety.

2. The parties shall bear their respective costs.
3. All other relief requests are denied.
4. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers Regulation, Inc. by the Claimant Bruce E. Babula, as custodian for David Babula shall be retained by NASD Regulation, Inc.

AFFIRMATION

I, **JACK F. MARLOW, ESQ.**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

A handwritten signature in dark ink, appearing to read 'J. Marlow', is written over a horizontal line. The signature is fluid and cursive.

Signature of Arbitrator

DATE OF DECISION: February 12, 1997