

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Dorothy R. Magee

96-03420

Name of Respondent

Nationwide Financial Services, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on August 8, 1996, claimant Dorothy R. Magee ("claimant"), who appeared Pro Se and acting under Power of Attorney for her mother, Dorothy R. Magee, alleged that respondent Nationwide Financial Services, Inc. ("respondent") improperly handled her account. Claimant further alleged that during the 1960's, Charles Edward Magee ("Mr. Magee") established a Keough Plan with respondent and purchased shares of Nationwide Fund. Claimant also alleged that in 1974 Mr. Magee began drawing \$100.00 monthly from the Nationwide Fund. Claimant also alleged that after Mr. Magee died, respondent's agent, Robert Eugene Fisher ("Fisher"), contacted her mother and telling her that respondent had instructed him to change the Nationwide Fund to a money market account upon closing Mr. Magee's Keogh Plan. Claimant contended that her mother did as asked because she trusted him. Claimant further contended that in January of 1996, she took over her mother's affairs and noticed the problem with the Nationwide Fund. Claimant also contended that the move to a money market fund was not suitable and should not have been done. Claimant asserted that as a result of the above, the respondent should be held liable.

Respondent Nationwide Financial Services, Inc. through its representative and manager of taxation and compliance, Craig Carver, maintained that Mr. Magee had a Keough Account with it and that he withdrew \$100.00 per month for income. Respondent further maintained that after his death, his wife redeemed the account on December 30, 1987, for \$9,673.03. Respondent also maintained that on January 4, 1988, his wife established Nationwide Money Market Fund account with a \$100.00 per monthly income payment. Respondent contended that the account is worth \$3,500.00 today. Respondent further contended that this complaint is nine years old and that it has no way of knowing the discussions with Mr. Fisher since he died in 1992. Respondent also contended that in December of 1987, the stock had just had a very large downturn and that many investors were concerned about the future of the financial markets. Respondent asserted that Fisher received no commission for the Magee transaction. Respondent further asserted that as a result of the above, it should not be held liable.

RELIEF REQUESTED

Claimant Dorothy R. Magee, under Power of Attorney, requested \$7,125.00 in actual damages plus interest.

Respondent Nationwide Financial Services, Inc. requested that the claims be dismissed in their entirety.

AWARD

Pursuant to Section 10302 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Sam A. Giunta, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the claimant on August 26, 1996, and by the respondent on September 27, 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 the claimant Dorothy R. Magee against respondent Nationwide Financial Services, Inc. are denied in their entirety.
2. The parties shall bear their respective costs and attorney's fees.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the claimant shall be retained by the NASD, Inc.

AFFIRMATION

I, Sam A. Giunta, 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.



Signature of Arbitrator

DATE OF DECISION:

December 19, 1996

REPORT OF ARBITRATOR

A significant period of time has passed coincident with the death of a primary witness, who is a party to the transaction at issue; and, the incapacitation of the claimant, who is also a party to the transaction.

Additionally, the parties have represented that other, potentially enlightening testimony or corroborating evidentiary documents are unknown or unavailable.

Such concomitant events, which have transpired since the date of the transaction (January 4, 1988) render the claim moot. Consequently, the trier of fact is left with limited facts and circumstances (cited in the Statement of Claim and related Answer) to consider and from which to make a fair determination.

Based on such consideration, there is no finding to support the claim.