

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Mary M. Rungaitis
Mary Rungaitis & Matilda Copeland
Richard & Rosina Milne
Ervin & Margery Shipman

v.

96-3499

Name of Respondents

Rauscher Pierce Refsnes, Inc.
Leif C. L. Hartwig

**ORDER OF THE
ARBITRATION PANEL**

REPRESENTATION OF PARTIES

"Claimants" were represented by James C. Frisch of King, Frisch & Allen, P.C., Tucson, Arizona.

"Respondents," Rauscher Pierce Refsnes, Inc. ("RPR") and Leif C. L. Hartwig ("Hartwig") were represented by James T. Ritt, Rauscher Pierce Refsnes, Inc., Dallas, Texas.

CASE INFORMATION

Claimants filed the Statement of Claim on or about 14, 1996.

Claimants signed the Submission Agreement on: Ervin Shipman, July 25, 1996; Matilda Copeland, July 29, 1996; Mary Rungaitis, July 29, 1996; Richard Milne, July 30, 1996.

Respondents filed their Joint Statement of Answer on or about November 4, 1996.

Respondent Hartwig signed his Submission Agreement on October 8, 1996. Respondent RPR signed its submission agreement on October 30, 1996.

HEARING INFORMATION

Pre-hearing conference was held on September 12, 1997 for one session.
The Arbitration Panel held a hearing on September 2, 1997, two sessions
September 23, 1997, two sessions
September 24, 1997, one session, for a total of five sessions.

Hearing location: Scottsdale, Arizona.

CASE SUMMARY

Claimants allege that their representative investments in the Alliance North American Government Mutual Fund (the "Alliance Fund") was unsuitable. In the Statement of Claim, Claimants assert that they purchased the Alliance Fund on the advice of Leif C. Hartwig, who at the time of their investments was employed by and under the supervision of RPR. Claimants have alleged that they informed Mr. Hartwig prior to making any investments with him that they wanted a safe investment. Claimants alleged that Mr. Hartwig told them that this was the highest yield with the lowest risk.

Without further specification, Claimants bring this action based on "unsuitability" claiming that the fund was misrepresented to them by Mr. Hartwig. Claimants' Statement of Claim does not further elaborate or specify that legal causes of action for which they seek relief.

Respondents RPR and Hartwig denied the allegations set forth in the Statement of Claim. Respondents specifically stated in their defense:

1. Claimants have brought this suit only with respect to the Alliance North American Government Income Trust as being unsuitable; thus, by implication Claimants conclude that all other investments undertaken in their accounts by RPR and Hartwig, were, in fact, suitable.

2. The losses alleged by the Claimants do not take into account any income which may have been received from the investment in the Alliance Fund or other investments made by each Claimant after consultation with Mr. Hartwig.

3. Respondents assert that Mr. Hartwig discussed with the Claimants their particular investment objectives, their current holdings including their investable assets, and various other issues related to their financial situation. According to Respondents after these discussions Mr. Hartwig prepared an investment planning guide setting forth the summary of their discussion and the recommendations to achieve their particular goals. Respondents assert that the Alliance Fund was a suitable investment for each Claimant based upon the Claimants' objectives of achieving higher income while maintaining safety of principal.

4. Respondents admit that Mr. Hartwig recommended the Alliance Fund to each of the Claimants and that RPR had recommended the Alliance Fund to investors with moderate risk tolerance. Respondents allege that Claimants' losses were due to unforeseeable market forces including interest rate hikes by the Federal Reserve Bank during 1994 and the devaluation of the Mexican Peso in late 1994.

RELIEF REQUESTED

Claimants requested an award of: the return of their net losses as set forth in the Statement of Claim, plus interest at the legal rate of 10% from the date of loss until paid. Claimants are also requesting that they be awarded their attorneys' fees and costs incurred.

Respondents denied the claims asserted against them and asked the panel to dismiss Claimants' Statement of Claim in its entirety and to award them costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that both Respondents have been properly served with the Statement of Claim pursuant to §10302 and §10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondents have received due notice of the hearing as required under §10315 of the Code and that arbitration of the matter would proceed pursuant to §10318 of the Code.

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(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

AWARD

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

Respondents RPR and Hartwig are jointly and severally liable for and shall pay:

1. to the Shipmans, the sum of \$20,000, as satisfaction of their claims for compensatory damages, interest and attorneys' fees;
2. to Mrs. Copeland, the sum of \$27,000, as satisfaction of her claim for compensatory damages. Mrs. Copeland's request for interest and attorneys' fees is denied;
3. to Mrs. Rungaitis, the sum of \$17,000, as satisfaction of her claim for compensatory damages. Mrs. Rungaitis' request for interest and attorneys' fees is denied;
4. to the Milnes, the sum of \$19,000, as satisfaction of their claim for compensatory damages. The Milnes request for attorneys' fees is denied;

OTHER COSTS

Each party shall pay its own attorneys' fees and costs incurred in connection with this arbitration, except as otherwise set forth in this Order.

FORUM FEES

Forum fees are calculated at the rate of \$500 per hearing session and \$300 for each Pre-hearing conference, if any. There was one (1) pre-hearing session (\$300) and 5 hearing sessions (5x \$500), for a total of \$2,800 in forum fees. Pursuant to §10332(b) of the Code a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10332(c) of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$150 and shall retain as forum fees the hearing session deposit in the amount of \$500 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimants.

Pursuant to §10333 of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable member surcharge in the amount of \$300 previously paid by RPR.

Forum fees in the amount of \$900 (\$1,400 - \$500 deposit) are assessed by the arbitrators jointly and severally against the Claimants.

Forum fees in the amount of \$1,400 are assessed jointly and severally against Respondents.

CONCURRING ARBITRATORS

Dated:

Janet W. Lord

/s/

October 30, 1997

Janet W. Lord
Chairperson

Howard Shanon

/s/

November 2, 1997

Howard Shanon
Public Arbitrator

Paul J. Phillips
Paul J. Phillips
Industry Arbitrator

/s/

November 4, 1997