

AWARD

NASD Regulation, Incorporated Office of Dispute Resolution

In the Matter of Arbitration Between

**Bert Ferganchick, Ann Ferganchick, Mark Ferganchick,
and Sonya Ferganchick,**

Claimants,

and

No. 96-03875

Principal Financial Securities, Inc.,

Respondent.

REPRESENTATION OF PARTIES

Claimants, Bert Ferganchick, Ann Ferganchick, Mark Ferganchick, and Sonya Ferganchick (hereinafter collectively referred to as "Claimants"), were represented by Bruce R. Heurlin, Esquire of Karp, Heurlin & Weiss, P.L.C., located in Tucson, Arizona.

Respondent, Principal Financial Securities, Incorporated ("Respondent"), was represented by Brian J. Hurst, Esquire of Baker & McKenzie, located in Dallas, Texas.

CASE INFORMATION

Claimants' Statement of Claim was filed on or about August 30, 1996.

Claimants' Amended Statement of Claim was filed on or about April 4, 1997.

Claimants' Reply to Counterclaim was filed on or about March 20, 1997.

Claimants' Amended Reply to the Amended Statement of Answer and Counterclaim was filed on or about May 21, 1997.

Bert Ferganchick's Submission Agreement was signed on July 26, 1996.

Ann Ferganchick's Submission Agreement was signed on July 26, 1996.

Mark Ferganchick's Submission Agreement was signed on July 25, 1996.

Sonya Ferganchick's Submission Agreement was signed on July 25, 1996.

Respondent's Statement of Answer and Counterclaim was filed on or about January 17, 1997.

Respondent's Amended Statement of Answer and Counterclaim was filed on or about May 13, 1997.

Respondent's Submission Agreement was signed on August 14, 1997 by Kathy M. Klock, General Counsel and Executive Vice President of Principal Financial Securities.

HEARING INFORMATION

Pre-hearing conference was held on: March 25, 1997 for one (1) session; and
August 27, 1997 for one (1) session.

The hearing was held on: September 8, 1997 for two (2) sessions; and
September 9, 1997 for two (2) sessions.

The hearing was held in Tucson, Arizona.

CASE SUMMARY

Claimants alleged that Respondent sold them unsuitable, speculative stock in Work Recovery, Incorporated, ("Work Recovery") contrary to their stated investment objectives. According to Claimants, Respondent utilized pressure sales tactics involving numerous telephone calls to Claimants. They complained that their accounts were not diversified, but were totally invested in Work Recovery. Claimants asserted that Respondent, a market maker for Work Recovery, failed to disclose the high risks of this stock and repeatedly made misleading statements of fact based on claimed non-public factual information of events to occur in the future. Claimants maintained that they relied on Respondent's claimed expertise and on self interest statements of Work Recovery. Claimants further asserted that after the sales to Claimants, Respondent failed to properly monitor these investments and negligently failed to recommend that the accounts be liquidated to avoid further losses. Claimants also alleged that Respondent violated fiduciary duties owed to them.

Respondent denied the allegations set forth in the Statement of Claim as they relate to any wrongdoing on its part. Respondent stated that none of Claimants' accounts were discretionary, and Claimants directed each and every Work Recovery purchase and sale. Respondent contended that each of the Claimants were advised by Respondent that Work Recovery was a speculative

investment, and each of the Claimants represented in writing to Respondent that speculation in common stocks was one of their investment objectives and that they had the financial strength to withstand the loss of their entire investment in Work Recovery. According to Respondent, contrary to what Claimants alleged, they did not rely exclusively on its representations about Work Recovery, and none of the Claimants sold conservative investments to buy Work Recovery stock on margin. Respondent asserted that all Claimants opened their accounts with Respondent solely to buy Work Recovery stock. Respondent also asserted various affirmative defenses set forth more fully in its Answer to the Statement of Claim.

Respondent also brought a counterclaim alleging that Claimants' claims are a sham brought in bad faith, and sought relief for its costs incurred in defending against Claimants' claims, including reasonable attorneys' fees and expert witness fees pursuant to *Thomas v. Prudential Securities, Inc.*, 921 S.W.2d 847 (Tex. App. 1996).

Claimants denied the allegations set forth in the counterclaim.

RELIEF REQUESTED

Claimants requested an award for compensatory damages of \$116,828.63 plus interest, costs, and attorney fees, to be divided as follows: \$51,039.13 plus interest, costs, and attorneys fees to Bert Ferganchick and Ann Ferganchick; and \$65,789.50 plus interest, costs, and attorneys fees to Mark Ferganchick and Sonya Ferganchick.

Respondent requested that the claims asserted against it be dismissed and that it be awarded its costs, including attorneys' fees and expert witness fees, incurred in this proceeding.

OTHER ISSUES CONSIDERED AND DECIDED

This case was originally filed in conjunction with *Spring Family Trust v. Principal Financial Services, Inc.*, NASD Regulation, Incorporated Office of Dispute Resolution No. 97-02147. Pursuant to Respondent's objection to joinder of all Claimants, that proceeding was severed from the present matter.

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 the NASD Regulation, Incorporated Office of Dispute Resolution.

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. Respondent Principal Financial Securities shall pay to Claimants Bert and Ann Ferganchick the sum of \$24,095 as an award of compensatory damages.
2. Respondent Principal Financial Securities shall pay to Claimants Mark and Sonya Ferganchik the sum of \$32,052 as an award of compensatory damages.
3. Respondent Principal Financial Securities shall pay to Claimants Mark and Sonya Ferganchik Bert and Ann Ferganchick the sum of \$950 as an award of filing fees and hearing session deposits paid in this case.
4. That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were two (2) pre-hearing conferences x \$300 and there were four (4) hearing sessions x \$750 = \$3,600 in forum fees. Pursuant to § 10332(b) of the NASD Code of Arbitration Procedure (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 Code, the NASD Regulation, Incorporated Office of Dispute Resolution shall retain the non-refundable filing fee of \$200 and shall retain as forum fees the hearing session deposit of \$750 previously deposited with the NASD Regulation, Incorporated Office of Dispute Resolution by Bert Ferganchick, Ann Ferganchick, Mark Ferganchick, and Sonya Ferganchick.

Pursuant to § 10332(c) of the Code, the NASD Regulation, Incorporated Office of Dispute Resolution shall retain the non-refundable filing fee of \$250 and shall retain as forum fees the hearing session deposit of \$600 previously deposited with the NASD Regulation, Incorporated Office of Dispute Resolution by Principal Financial Securities, Incorporated.

Pursuant to § 10333 of the Code, the NASD Regulation, Incorporated Office of Dispute Resolution shall retain the non-refundable member surcharge of \$350 previously deposited with the NASD

Regulation, Incorporated Office of Dispute Resolution by Principal Financial Securities, Incorporated.

Additional forum fees in the amount of \$2,250 (\$3,600 fees - \$1,350 deposits) are assessed by the arbitrators against Principal Financial Securities, Incorporated.

Fees are payable to the NASD Regulation, Incorporated Office of Dispute Resolution.

Concurring Arbitrators' Signatures

Michael E. Duckworth
Michael E. Duckworth
Chairperson
Public Arbitrator

/s/

October 6, 1997

Dated:

James Kneller
James Kneller
Panelist
Public Arbitrator

/s/

October 3, 1997

Dated:

Seymour L. Lubliner
Seymour L. Lubliner
Panelist
Industry Arbitrator

/s/

October 4, 1997

Dated: