

## **AWARD**

### **NASD Regulation, Inc. Office of Dispute Resolution**

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In the Matter of Arbitration Between

Pamela S. Tadiello, Individually and as Trustee of the Pamela S. Tadiello IRA Account

Claimant,

and

No. 96-04173

The Principal Financial Group,  
Robert Hayes, and  
David T. Aldridge

Respondents.

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### **REPRESENTATION OF PARTIES**

Claimant, Pamela S. Tadiello, Individually and as Trustee of the Pamela S. Tadiello IRA Account ("Tadiello") was represented by K. Clark Phipps of Atkinson, Haskins, Nellis, Boudreaux, Holeman, Phillips & Brittingham located in Tulsa, OK.

Respondents, The Principal Financial Group ("The Principal"), Robert Hayes ("Hayes") and David Aldridge ("Aldridge") were represented by William B. Federman, Esq. of Day, Edwards, Federman and Propester located in Oklahoma City, OK.

### **CASE INFORMATION**

Claimant, Tadiello's Statement of Claim was filed on or about: October 23, 1996.

Claimant, Tadiello's Amended Statement of the Claim was filed on or about: October 25, 1996.

Claimant, Tadiello's Second Amended Statement of the Claim was filed on: July 1, 1997.

Claimant, Tadiello's Submission Agreement was signed on: September 12, 1996.

Respondent, The Principal's Answer was filed on or about: December 12, 1996.

Respondents', The Principal, Hayes and Aldridge's joint Answer to the Second Amended Claim was filed on: July 16, 1997.

Respondent, The Principal's Submission Agreement signed by Susan Brown Owens, Assistant General Counsel and Assistant Vice President was executed on: December 12, 1996.

Respondent, Hayes's Submission Agreement was signed on: July 24, 1997.

Respondent, Aldridge's Submission Agreement was signed on: December 12, 1996.

### HEARING INFORMATION

An in-person conference before three arbitrators was held on: June 17, 1997 for one (1) hearing session.

The hearing was held on: October 1, 1997 for two (2) hearing sessions;  
October 2, 1997 for two (2) hearing sessions; and  
October 3, 1997 for two (2) hearing sessions.

The pre-hearing and hearing were held in: Oklahoma City, OK.

### CASE SUMMARY

Claimant, Tadiello brought this action against Respondents, Aldridge, Hayes and The Principal Financial Group alleging: misrepresentations, omissions, churning, suitability and breach of fiduciary duty. Specifically, Claimant alleged that Hayes, an Operation Manager, Aldridge, her Financial Advisor, and The Principal breached their fiduciary obligations to her in the handling of her account from 1992 through 1995 pursuant to the common law of Oklahoma. Claimant also alleged that Aldridge made misrepresentations and omitted material facts inducing her to buy and sell securities in violation of Oklahoma Stat tit. 71 s 408 (A) (2) and (C) (2), 15 U.S.C. 77(L) and (Q), 15 U.S.C. 78 (J) (b) Rule 10 (b) (5). Claimant contended that Aldridge had *de facto* control over her IRA account by his superior knowledge, information and experience. As alleged, Aldridge excessively traded or churned the account to generate commissions to the detriment of Claimant's financial position. There were allegedly 157 trades involving mostly small capital companies, initial public offerings and other stocks classified as aggressive growth which generated about \$33,000 in commissions and a loss of approximately \$16,000 to the Claimant. According to Tadiello, The Principal, as the broker-dealer and employer, was responsible for the acts of David Aldridge. Tadiello further alleged that Aldridge, Hayes and The Principal violated their obligations under NASD Rules of Fair Practice, Section 2, Section 3, Section 18 and Section 27.

Respondents, The Principal, Hayes, and Aldridge denied the allegations set forth in the Statement of Claim as they related to any wrongdoing on its part. Specifically, Respondents asserted that: Tadiello had full knowledge of the transactions complained of in the Statement of Claim; any losses in Ms. Tadiello's account were caused by market conditions which were beyond control of Principal Financial Securities; Tadiello ordered, approved, participated in and ratified the acts and transactions that she complained of; any losses in Tadiello's account were proximately caused by her own decisions and conduct; Tadiello's claims were barred by the doctrine of laches; Tadiello's claims were barred by the applicable statute of limitations; and that Tadiello was not entitled to recovery against The Principal in this action because The Principal acted at all times in good faith and in the exercise of reasonable diligence, and could not have known of any alleged negligence of impropriety with the accounts in issue in this matter.

Furthermore, Respondent Aldridge asserted that he kept Tadiello advised about her investments at all times and Claimant was aware of the nature of each investment made on her behalf. Aldridge also

asserted that Tadiello conducted her investment business with Aldridge for nearly eight years, with two different brokerage firms without ever having a complaint. In addition, Aldridge contended that Tadiello received monthly and annual statements on her account, as well as confirmation slips on each and every trade.

The Respondents also asserted that Tadiello's account was a non-discretionary account and, contrary to the statements made in the Claim, she maintained complete control of the account. In addition, the Respondents stated that the turnover ratio by Tadiello in the Claim was grossly exaggerated, that it relied on faulty methodology which apparently failed to consider the complete holding periods of various stocks in accordance with industry standards and that it did not account for transactions to reposition the account for Claimant's changed investment objectives.

### **RELIEF REQUESTED**

Claimant, Tadiello requested an award for: reimbursement of \$33,000 in commissions paid; reimbursement of a reasonable return on the account for the time period it was at The Principle; reimbursement of lost account value; reimbursement of an amount equal to the lost tax deferral from her Individual Retirement Account; the costs of prosecuting the claim; and a reasonable attorney's fees.

Respondents, The Principal, Hayes and Aldridge requested that the claims asserted against them be dismissed in their entirety and that they be awarded costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Pursuant to § 10328 of the NASD Code of Arbitration Procedure (the "Code"), the undersigned arbitrators granted Claimants' requests to amend on or about June 17, 1997 and October 21, 1997 after reviewing the written submissions and following oral arguments by the parties.

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, Inc. 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. Respondents, The Principal Financial Group, David T. Aldridge and Robert Hayes are jointly and severally liable for and shall pay to Claimant, Pamela S. Tadiello, Individually and as Trustee of the Pamela S. Tadiello IRA Account, a total of \$61,900 in damages which is the sum of the following amounts: \$30,000 in damages for excess commissions, \$12,000 in interest; \$14,000 in attorneys fees; and \$5,900 for litigation expenses.
2. Other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied in their entirety and dismissed with prejudice.

#### **FORUM FEES**

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each pre-hearing conference. There were seven (7) hearing sessions x \$400 = \$2,800 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, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee of \$100 and shall retain as forum fees the hearing session deposit of \$400 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by the Claimant.

Pursuant to § 10333 of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable member surcharge of \$200 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Respondent, The Principal Financial Group.

Pursuant to § 10332(c) of the Code, Respondents, The Principal Financial Group, David Aldridge and Robert Hayes are jointly and severally liable for and shall pay to Claimant, Pamela S. Tadiello, Individually and as Trustee of the Pamela S. Tadiello IRA Account the sum of \$500 as reimbursement of the hearing session deposit and claim filing fee.

Pursuant to § 10332(c) of the Code, Respondents, The Principal financial Group, David T. Aldridge and Robert Hayes are jointly and severally liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$2,400 in additional forum fees..

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

Concurring Arbitrators' Signatures

Leroy Patton, Esq.  
Leroy Patton, Esq.  
Chairperson  
Public Arbitrator

October 20, 1997  
Dated:

Thomas A. Bamberger, Esq.  
Thomas A. Bamberger, Esq.  
Panelist  
Public Arbitrator

October 20, 1997  
Dated:

Wallace W. Kunzman, Jr., Esq.  
Wallace W. Kunzman, Jr., Esq.  
Panelist  
Industry Arbitrator

October 21, 1997  
Dated:

For NASD use only:  
Date Award was served on the parties: October 27, 1997