

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

William C. and Lillian H. Wilkes

96-04299

Name of Respondents

Euro-Atlantic Securities Inc.
Michael Payne

CASE SUMMARY

In a case filed with the National Association of Securities Dealers Regulation Inc. on September 27, 1996, claimants William and Lillian Wilkes ("claimants"), who appeared Pro Se, alleged that respondents Euro-Atlantic Securities, Inc. ("EAS") and Michael Payne ("Payne") committed numerous securities law violations in their account. Claimants further alleged that their association with respondents began with a barrage of telemarketing type calls asking to manage their investments. Claimants also alleged that they listened, read the brochures and believed the many verbal claims of a super-acumen in account management. Claimant asserted that Payne was advised of their ages (70) and the existing conservative investment patterns of mostly closed-end funds paying 8-10%. Claimants further asserted that Payne recklessly threw their money around. Claimant also asserted that Payne, by his actions, abandoned both the client and the stock American Toy ("AMTOY"), by falsely signalling and, thereby, confirming its demise and worthlessness. Claimants contended that respondents misrepresented themselves as money managers. Claimants further contended that respondents disregarded their own written, stated corporate investment policies. Claimants also contended that respondents invested claimant's funds in inappropriate, high-risk investments.

Respondent Euro-Atlantic Securities, Inc. ("EAS") through its representative and in-house counsel Robert Carlin maintained that claimants have taken one part of EAS's brochure and attempted to question the integrity of the document by using two excerpts from different parts of the brochure. Respondents further maintained that claimants have attempted to combine part of a paragraph from EAS's perspective and a paragraph from Investing in Safety in order to mislead the panel on the intent of the document. Respondent also maintained that claimants had an investment objective of speculation and therefore, speculative securities were recommended. Respondent contended that claimants assertion that EAS disregarded their own written policies is absurd. Respondent further contended that the brochure informs the client that EAS will provide to them recommendations which meet their investment needs. Respondent also contended that claimants were apparently unhappy with the 8-10% they were receiving in their closed-end funds and decided to speculate with part of their portfolio. Respondent maintained that Payne recommended the purchase of priced NASDAQ securities to try and maximize their rate of return, which also carried a higher degree of risk than closed-end funds.

Respondent further maintained that claimants stated they had an investment objective of speculation, experience in the market and an estimated liquid net worth of between \$100,000.00 and \$500,000.00. Respondent also maintained that based on this information which they signed off, it was determined that the size of their investment in speculative securities was suitable, even after considering all other factors. Respondent contended that claimants account was non-discretionary, therefore claimants had the ultimate decision in their hands. Respondent further contended that Payne could only offer his recommendations to claimants, but the decision whether to buy, sell or hold belonged only to claimants. Respondent also contended that claimants have filed a claim that is unclear, unsubstantiated and should be dismissed against EAS.

Respondent Payne did not file an Answer to the Statement of Claim.

RELIEF REQUESTED

Claimants William and Lillian Wilkes requested \$7,691.00 in damages.

Respondent EAS requested that the claims of claimant against them be dismissed in their entirety, plus costs and fees associated with defending this matter.

Respondent Payne did not file an Answer to the Statement of Claim.

OTHER ISSUES CONSIDERED & DECIDED

In accordance with Rule 10301 of the Code of Arbitration Procedure, respondent Michael Payne, was served by regular mail and given an opportunity to respond, which he failed to do. In addition, notice of the overdue answer and notification of the Arbitrator's identity was effected upon respondent Michael Payne, as evidenced by the signed signature cards on file at NASD Regulation, Inc.

Pursuant to the By-laws of the NASD Regulation, the arbitrator determined that respondent Michael Payne had notice of the claim, and was required to submit to this arbitration proceeding; and is, therefore bound by the arbitrator's ruling and determination.

AWARD

Pursuant to Rule 10302 of the Code of Arbitration Procedure, a single Public Arbitrator, James Cormack, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by claimants William and Lillian Wilkes September 25, 1996 and by respondent EAS on January 20, 1997. Respondent Michael Payne did not execute a Submission Agreement as required by Rules 10301 and 10302 of the Code of Arbitration Procedure.

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 claimants William and Lillian Wilkes against respondents EAS and Michael Payne are dismissed in their entirety.
2. All other relief requests are denied.

3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers Regulation Inc. by claimants shall be retained by NASD Regulation, Inc.

AFFIRMATION

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


James A. Cormack

Date of Decision: April 30, 1997