

**NASD REGULATION, INC.
AWARD**

In the Matter of the Arbitration Between

Name of Claimants

Donald A. Ochteau and Jeanne C. Ochteau

vs.

Case No.

9604779

Name of Respondents

Koegler Morgan & Company, Inc.
Nationwide Advisory Services
Nationwide Life Insurance Company
Walnut Street Securities
Domenic P. Ferrante
Marlene McKenna

REPRESENTATION

For Claimants Donald A. Ochteau and Jeanne C. Ochteau ("Claimants") appeared Bruce S. Schaeffer, Esq. a sole practitioner with law offices located in New York, New York.

For Respondent Koegler Morgan & Company, Inc. ("Koegler") appeared Jeffrey Montgomery, Esq. of the law offices of Cushing, Morris, Armbruster & Jones located in Atlanta, Georgia.

For Respondent Nationwide Advisory Services ("NAS") and Nationwide Life Insurance Company ("Nationwide") appeared Eugene F. Assaf, Esq. of the law offices of Kirkland & Ellis located in Washington, District of Columbia.

For Respondent Walnut Street Securities ("Walnut") appeared Jeffrey J. Kalinowski, Esq. of the law offices of Peper, Martin, Jensen, Malghel & Hetlage located in St. Louis, Missouri.

Respondent Domenic P. Ferrante ("Ferrante") did not enter an appearance in this matter.

For Respondent Marlene McKenna ("McKenna") appeared Kevin McKenna, Esq. a sole practitioner with law offices located in Providence, Rhode Island.

CASE INFORMATION

Claimants' Statement of Claim was filed on October 25, 1996.

Claimants' Submission Agreements were signed on October 23, 1996 and January 23, 1997.

An Amended Statement of Claim was filed on January 3, 1997.

A Second Amended Statement of Claim was filed on February 19, 1997.

Claimants' Response to Koegler's Amendment of Counterclaim and to McKenna was filed on June 10, 1997.

Koegler's Statement of Answer and Counterclaim was filed on December 19, 1996.
Koegler's Submission Agreements were signed on December 18, 1996 and March 25, 1997.
Koegler's Response to Amended Statement of Claim, Reply to Answer to Counterclaim and Third-party Claim Against McKenna was filed on February 18, 1997.
Koegler's Response to Second Amended Statement of Claim and Amendment of Counter Claim was filed on May 15, 1997.

A Joint Statement of Answer was filed by NAS and Nationwide on March 20, 1997.
NAS' Submission Agreement was signed on April 3, 1997.
Nationwide's Submission Agreement was signed on April 3, 1997.

Walnut's Statement of Answer was filed on March 28, 1997.
Walnut did not file a properly executed Submission Agreement.

McKenna's Statement of Answer to Third Party Claim was filed on March 7, 1997.
McKenna's Response to Second Amended Statement of Claim was filed on March 8, 1997.

Ferrante did not file a Statement of Answer or a properly executed Submission Agreement.

HEARING INFORMATION

Pre-Hearing Conferences:	December 17, 1997	-	1 session
	July 17, 1998	-	1 session
	August 13, 1998	-	1 session
Hearing Dates/Sessions:	May 18, 1998	-	2 sessions
	May 19, 1998	-	2 sessions
	May 20, 1998	-	2 sessions
	June 4, 1998	-	1 session
	June 5, 1998	-	2 sessions
	September 10, 1998	-	2 sessions

The hearings, with the exception of those held on September 10, 1998, were conducted at the offices of the American Arbitration Association located in Boston, Massachusetts. The hearings held on September 10, 1998 were conducted at the Boston Park Plaza Hotel located in Boston, Massachusetts.

CASE SUMMARY

Claimants alleged that they had no prior investment experience and that, between April 1993 and early 1996, Ferrante, who was a registered representative with Koegler, mishandled their account and unsuitably invested their monies for his financial gain. Claimants also alleged that Koegler, after an internal review, terminated Ferrante. Claimants further alleged that neither Koegler nor the other Respondents warned or advised Claimants of this investigation. Claimants maintained that Ferrante has since pleaded guilty to federal crimes of stealing more than \$1

million from about twenty investors over a period of four years. In addition, Claimants contended that Respondents breached their fiduciary duty and failed to supervise Ferrante.

Koegler maintained that, up until the time that it received the Statement of Claim, it was unaware that Ferrante had defrauded and embezzled from the Claimants or anyone else, and consequently denied this allegation. Koegler stated that, if Ferrante did defraud and embezzle from Claimants, it denied liability. Koegler maintained that Ferrante was not authorized to act as its agent because his registration had not yet been approved by the NASD, the states of Massachusetts or Rhode Island. Koegler stated that the Statement of Claim failed to identify whether the securities which Ferrante allegedly sold to Claimants were Koegler's products and services but, upon information and belief, Koegler believes that they were not. Koegler contended that Claimants did not receive any statements from Koegler. Koegler also contended that Ferrante was terminated in 1993 but Claimants' New Account Form was dated in 1994. In addition, Koegler alleged that Claimants should have known that Ferrante was still employed with Walnut because the Annuity Application showed that Walnut was the "General Agent". Koegler contended that Claimants represented to Special Agent McEntee of the Internal Revenue Service that they gave Ferrante funds between April 1994 and November 1994 with the representation that the funds would be invested in a "special account" to be accumulated and managed by Ferrante personally.

In its Third-party Claim against McKenna, Koegler alleged that McKenna was Ferrante's partner and gave advice to Claimants, and must have had some knowledge of the activities that led to the alleged defrauding of Claimants, and may have had supervisory responsibilities over Ferrante.

NAS and Nationwide denied the allegations of wrongdoing and denied any liability. NAS and Nationwide maintained that NAS was never involved with Ferrante and that, on September 10, 1993, Ferrante sold Claimants an annuity contract. Nationwide alleged that it issued Claimants an annuity contract in the amount she invested and had no knowledge about the funds that were mishandled or unsuitably invested. Nationwide alleged that it appointed Ferrante with Walnut in accordance with their General Agent Agreement and Rhode Island insurance laws to sell variable life and variable annuity products. Nationwide alleged that, on October 21, 1993, Ferrante called Koegler to have him appointed with Nationwide. Nationwide contended that it was unaware that Koegler had terminated Ferrante or that Ferrante had lost, stolen, or diverted Claimants' funds until they saw newspaper articles in 1996.

Walnut denied the allegations of wrongdoing and denied liability. Specifically, Walnut denied that Ferrante was acting under its apparent authority but, stated that Ferrante was an independent contractor licensed to effect securities transactions through Walnut from February 12, 1993 to September 23, 1993. Walnut contended that the funds allegedly misappropriated by Ferrante were entrusted to him between April 15, 1994 through April 12, 1995, which was more than six months after Ferrante's affiliation with Walnut. Walnut further contended that the funds Claimants invested with Ferrante during the time he was affiliated with Walnut, were properly invested.

McKenna denied the allegations of wrongdoing. McKenna maintained that she did not have supervisory authority over Ferrante or any of his clients. McKenna also maintained that she did not have a principal's license. McKenna further maintained that she received a call from

Claimants claiming that he was a client of Ferrante and was interested in buying an annuity. McKenna contended that she informed Claimants that she no longer shared office space with Ferrante, and Claimants later requested to meet with her. McKenna also contended that Claimants' funds were properly invested in a Manulife Annuity contract. McKenna further contended that Ferrante was not involved in this transaction.

RELIEF REQUESTED

Claimants requested actual damages in excess of \$289,090.68, plus punitive damages, treble damages and attorneys' fees.

Koegler requested that all claims be dismissed in their entirety. In it's Counterclaim, Koegler requested punitive damages in excess of \$200,000.00 plus expenses, including reasonable travel expenses, costs and attorneys' fees.

NAS and Nationwide requested that the arbitrators dismiss them from this arbitration.

Walnut requested that Claimants' Second Amended Statement of Claim be dismissed with prejudice and that it be awarded costs and attorneys' fees.

McKenna requested that the Statement of Claim be dismissed in its entirety and an award of attorneys' fees and costs. In addition, McKenna requested that all slanderous and defamatory statements regarding her be stricken and that the pleadings and other filings related to her be sealed and/or destroyed. McKenna also requested that the claims of Koegler be dismissed and that she be awarded attorneys' fees and costs.

OTHER ISSUES CONSIDERED & DECIDED

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 originals remain on file with NASD Regulation, Inc.

The arbitrators considered all submissions regarding Walnut and McKenna's respective Motions to Dismiss. The claims against Respondents Walnut and McKenna were dismissed by the arbitrators during the proceedings upon allowance of Respondents Walnut and McKenna's respective Motions.

The panel made the following determinations concerning Ferrante who did not file a Statement of Answer or a Submission Agreement and did not appear at the hearing in this matter:

1. Pursuant to Rule 10101 of the Code of Arbitration Procedure (the "Code"), the arbitrators found subject matter jurisdiction over this entire controversy.
2. The panel found that Ferrante was a person associated with a member of the NASD at the time this controversy arose. Accordingly, the panel found personal jurisdiction over him pursuant to Rule 10301 of the Code.

3. The panel found that Ferrante was required to file a Statement of Answer and Submission Agreement with NASD Regulation pursuant to Rule 10314(b) of the Code. In this regard, the panel found that the Statement of Claim was properly served upon Ferrante pursuant to Rule 10314 (a) of the Code.
4. In accordance with Rules 10301, 10315 and 10318 of the Code, the panel found that NASD Regulation gave Ferrante "due notice" of the hearings conducted in this matter by regular and certified mail. The panel further determined to proceed with the hearing without Ferrante whose absence was unexcused.

After the commencement of the first hearing session but prior to the rendition of the award in this matter, arbitrator James E. Dowd, Esq. was unable to continue to serve as an arbitrator in this matter. In accordance with Rule 10313 of the Code and with the consent of the parties, the remaining arbitrators continued with the hearing and rendered a determination in this controversy.

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. Ferrante be and hereby is liable for and shall pay to Claimants the sum of **ONE HUNDRED SEVENTY THREE THOUSAND EIGHT HUNDRED THIRTY DOLLARS (\$173,830.00)**.
2. Ferrante be and hereby is liable for and shall pay to Claimants interest in the amount of \$83,438.00.
3. Ferrante be and hereby is liable for and shall pay to Claimants attorneys' fees in the amount of \$50,000.00.
4. All claims against Respondents Koegler, NAS, and Nationwide are hereby denied.
5. Koegler's counterclaims against Claimants are hereby denied.
6. Claimants' requests for punitive and treble damages are hereby denied.
7. All other requests are hereby denied.

OTHER COSTS

Pursuant to Rule 10333 of the Code, Koegler has paid to NASD Regulation, Inc. the \$500.00 member surcharge previously invoiced.

FORUM FEES

Pursuant to Rule 10332(c) of the Code, the arbitrators have determined that NASD Regulation, Inc. will retain the \$250.00 non-refundable filing fee submitted by Claimants and the \$500.00 non-refundable filing fee submitted by Koegler and have assessed the following forum fees:

3 pre-hearing conferences with full panel	=	\$ 3,000.00
11 hearing sessions x \$1,000.00	=	\$11,000.00
Hearing Session Deposit	=	\$ 1,000.00
Total Forum Fees Outstanding	=	\$13,000.00

Koegler be and hereby is liable for the sum of \$13,000.00, representing the total amount of forum fees outstanding. Koegler previously deposited \$1,750.00 with NASD Regulation, Inc. and, therefore, shall pay the balance of \$11,250.00.


Fees are payable to NASD Regulation, Inc.

ARBITRATION PANEL

Richard J. Grahn, Esq.
Stanley H. Labinger

Public Chairperson
Public Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE


Stanley H. Labinger.

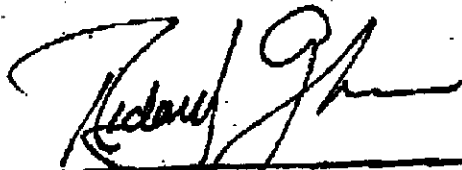
Date of decision: October 22, 1998

ARBITRATION PANEL

Richard J. Grahn, Esq.
Stanley H. Labinger

- Public Chairperson
- Public Panelist

CONCURRING ARBITRATOR'S SIGNATURE

A handwritten signature in dark ink, appearing to read "Richard J. Grahn", written over a horizontal line.

Richard J. Grahn, Esq.

Date of decision: October 22, 1998