

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between:

James E. Askey and Doris Askey, (Claimants) vs. Dain Rauscher Inc.,
(Respondent).

Case Number: 99-00945

Hearing Site: Omaha, Nebraska

REPRESENTATION OF PARTIES

Claimants, James E. Askey ("Askey") and Doris Askey, hereinafter collectively referred to as "Claimants": C.W. Austin, Esq., Richmond, Virginia.

Respondent, Dain Rauscher Inc., hereinafter referred to as "Respondent":
Suzanne E. Shehan, Esq., Kutak Rock, Omaha, Nebraska.

CASE INFORMATION

Statement of Claim filed on or about: March 2, 1999
Amended Statement of Claim filed on or about: June 28, 1999
Claimants signed the Uniform Submission Agreement: January 26, 1999
Statement of Answer filed by Respondent on or about: June 21, 1999
Answer to Amended Statement of Claim filed by Respondent on or about: Jul
30, 1999
Respondent signed the Uniform Submission Agreement: May 5, 1999
Motion to Dismiss or For Summary Judgment filed by Respondent on or about:
June 16, 1999
Response to Motion to Dismiss or For Summary Judgment filed by Claimant on
or about: August 30, 1999
Reply to Response to Motion to Dismiss or For Summary Judgment filed by
Respondent on or about: September 22, 1999

CASE SUMMARY

Claimant asserted the following causes of action: Violation of Sections 2110, 2120 and 2310 of the NASD Conduct Rules; breach of fiduciary duty; actual and constructive common law fraud; and gross negligence. The causes of action relate to the order execution of Pilgrim Adjustable U.S. Government Securities Trust.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the many defenses including, but not limited to: the claims were barred by the statute of limitations; the accounts were nondiscretionary and Claimant made all investment decisions; Respondent cannot be found liable for misrepresentations made by Pilgrim; the claim failed to state facts sufficient to state a claim for relief; the claims were barred by the doctrine of ratification; Claimants failed to take reasonable steps to mitigate their claim; Claimants voluntarily assumed all risks relating to their stock purchases; Claimants were contributorily and comparatively negligent or reckless in connection with their accounts; the claims were barred under the doctrine of laches; the claims were barred by estoppel and waiver due to their conduct.

RELIEF REQUESTED

Claimants requested:

Compensatory Damages	\$17,939
Punitive Damages	unspecified
Interest	unspecified
Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief if any:	unspecified

Respondent requested:

Dismissal

OTHER ISSUES

The Arbitrator overruled the Respondent's Motion to Dismiss or for Summary Judgment.

AWARD

After considering the pleadings and the evidence presented in the pleadings by the parties, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim and Amendment submitted by James E. and Doris Askey are denied in their entirety and dismissed with prejudice; and
2. Any and all relief not specifically addressed herein, including punitive damages, is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$75

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is Dain Rauscher Inc.

Member surcharge = \$400

Forum Fees and Assessments

The Panel assesses forum fees for a case decided on the paper record. Fees associated with these proceedings are:

One fee for case decided on the paper record x \$75 = \$75

Total Forum Fees = \$75

1. The Panel has assessed \$75 of the forum fees jointly and severally to James E. and Doris Askey.

Fee Summary

1. Claimant, James E. and Doris Askey, be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$75
Forum Fees	= \$75

Total Fees	= \$150
<u>Less payments</u>	= \$375
Refund	= \$225

2. Respondent, Dain Rauscher Inc., be and hereby is solely liable for:

Member Fees	= \$400
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Total Fees	= \$400
<u>Less payments</u>	= \$400
Balance Due NASD Regulation, Inc.	= \$0

Concurring Arbitrator's Signature

Thomas J. Tarsney, Esq.
Public Arbitrator, Presiding Chair

May 2, 2011
Signature Date

Date of Service (For NASD office use only)