

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between:

William W. McCandlish, Claimant vs. Franklin Templeton Investor Services, Inc. and Anthony N. Einweck, Respondents.

Case Number: 99-01056

Hearing Site: San Francisco, CA

REPRESENTATION OF PARTIES

Claimant, William W. McCandlish (hereinafter referred to as "Claimant": *In Pro Per*, 85 Warfield Drive, Moraga, CA 94556.

Respondents, Franklin Templeton Investor Services, Inc., (hereinafter referred to as "Franklin Templeton") and Anthony N. Einweck, (hereinafter referred to as "Einweck"): Ben Suter, Esq., Keesel, Young & Logan, Four Embarcadero Center, Suite 1500, San Francisco, CA 94111.

CASE INFORMATION

Statement of Claim filed on or about: March 9, 1999

Claimant signed the Uniform Submission Agreement: March 13, 1999

Statement of Answer filed by Respondent, Franklin Templeton on or about: June 24, 1999

Statement of Answer filed by Respondent Einweck on or about: June 24, 1999

Respondent, Franklin Templeton, signed the Uniform Submission Agreement: May 15, 2000

Respondent, Einweck, signed the Uniform Submission Agreement: May 15, 2000

CASE SUMMARY

Claimant asserted the following: Claimant asserted that Respondent Einweck provided incorrect information regarding the performance of a Franklin mutual fund. Claimant further contends that the information caused him to sell his entire position in the Franklin U.S. Government Securities Fund and purchase shares of the Franklin Mutual Beacon Fund. Claimant alleges that he should be reimbursed for the decline in value he sustained as a result of selling his shares of the Franklin U.S. Government Securities Fund. Claimant further alleges that he never gave authority to Respondent Einweck to transfer the funds from the Franklin U.S. Government Securities Fund back to the Franklin Mutual Beacon Fund.

Unless specifically admitted in its Answer, Respondent Einweck and Respondent Franklin Templeton denied the charges contained in the Statement of Claim and asserted the following defenses: Claimant's alleged loss was caused by his own investment decisions; Respondent Einweck and Respondent Franklin Templeton did not owe Claimant a fiduciary duty; Claimant ratified the handling of his accounts; Claimant did not act with reasonable diligence; the claims fail

to state a claim upon which relief can be granted; Claimant's allege damages resulted in whole or in part from his acts and omissions; Claimant failed to mitigate the alleged damages; Claimant assumed the risk of loss and; Claimant's claims are barred by the doctrines of estoppel, waiver, laches and ratification.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	\$59,882.66
Punitive Damages	Unspecified.

Respondent, Einweck and Respondent, Franklin Templeton requested:

Costs	Of arbitration.
Other Monetary relief:	Such other relief as the Arbitration Panel deems proper.
Non-Monetary Relief:	Dismissal of Claimant's Statement of Claim.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent, Franklin Templeton was identified incorrectly in Claimant's Statement of Claim as Franklin/Templeton Distributors, Inc. During the arbitration hearing, counsel for Respondent Franklin/Templeton stated, on the record that he was appearing only on behalf of Respondent Einweck and Respondent Franklin Templeton.

Also during the hearing, Claimant withdrew his claims against Respondent Einweck. Thereafter, Respondent Einweck submitted a Motion for Expungement to the Panel.

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.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Upon motion and request of Respondent Einweck, the Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Einweck's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Einweck must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

All claims are dismissed against Respondent Franklin Templeton.

All other claims are denied in their entirety.

Forum fees will be split equally between the remaining parties.

The parties shall each bear their own costs of arbitration.

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 = \$150

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$1000
Pre-hearing process fee	= \$ 600
<u>Hearing process fee</u>	<u>= \$1500</u>
Total member fees	= \$3100

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$500	= \$500
Pre-hearing conference: December 3, 1999	1 session

Two (2) Hearing sessions x \$500	= \$1000
<u>Hearing Date: May 3, 2000</u>	<u>2 sessions</u>
Total Forum Fees	= \$1500

1. The Panel has assessed \$750 of the forum fees to Claimant.
2. The Panel has assessed \$750 of the forum fees to Respondent Franklin Templeton.

Fee Summary

1. Claimant, is hereby solely liable for:

Initial Filing Fee	= \$ 150
<u>Forum Fees</u>	<u>= \$ 750</u>
Total Fees	= \$ 900
<u>Less payments</u>	<u>= \$ 750</u>
Balance Due NASD Regulation, Inc.	= \$ 150

2. Respondent, Franklin Templeton is hereby is solely liable for:

Member Fees	= \$3100
<u>Forum Fees</u>	<u>= \$ 750</u>
Total Fees	= \$3850
<u>Less payments</u>	<u>= \$3100</u>
Balance Due NASD Regulation, Inc.	= \$ 750

All balances are due to NASD Regulation, Inc. and are payable within 30 days of the service date of this Award.

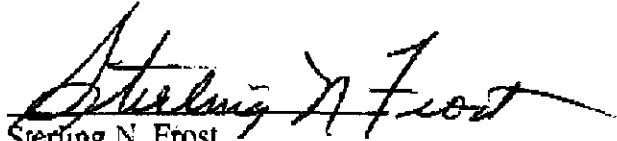
RCV BY:
FROM : Sterling Frost

5-22- 0 10:38AM :
PHONE NO. : 408 458 9217

408 458 9217→NASD ARBITRATION DPT:# 2
May. 22 2000 09:51AM P2

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Concurring Arbitrators' Signature(s)



Sterling N. Frost
Public Arbitrator, Presiding Chair

Signature Date

Omar J. Brubaker
Public Arbitrator

Signature Date

David J. Romanski, Esq.
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

Date Served:

MAY 25 2000


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NASD Regulation, Inc. Office of Dispute Resolution
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Public Arbitrator

Signature Date

David J. Romanski
David J. Romanski, Esq.
Industry Arbitrator

5/18/2000
Signature Date

Date of Service (For NASD office use only)

Date Served:

MAY 25 2000