

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

HELMA H. NEWTON AND RICK L. BROWN,  
as Trustee et al.

Claimants

and

BOETTCHER & CO., INC. AND  
BRIAN R. BENNETT

Respondents

CASE NO. 88-00730

CASE SUMMARY

Helma Newton ("Newton") and Rick L. Brown Trustee of Newton Trusts one through four (Newton and Brown are collectively referred to herein as "Claimants") alleged: 1) that Boettcher & Company, Inc.'s registered representative Brian R. Bennett ("Bennett") recommended to Merrill R. Newton that the Claimants purchase Petro-Lewis limited partnership interest, (Boettcher and Brian R. Bennett are collectively referred to herein as "Respondents"), 2) Merrill Newton advised Bennett that the investment objectives of the claimants were conservative with long term growth of principal with minimal risk, 3) Bennett represented to Merrill Newton that the Petro investment was a conservative - low risk investment and such representation was false; 4) Bennett failed to advise the Claimants of risk of the Petro Lewis investment, 5) the Petro Lewis investment was unsuitable for the Claimants, and 6) Respondents' acts constituted negligence:

Respondents alleged as follows:

1. They denied each and every claim of the Claimants;
2. The Claimants received a prospectus which fully advised the claimants of all material risk regarding the Petro Lewis investments;
3. The problems which Petro Lewis sustained was due to the collapse of oil prices which was not foreseeable by the Respondents;

4. Claimants' claims are barred by the following affirmative defense: a) statute of limitations, b) Section 15 of the NASD Code of Arbitration Procedure, c) failure to state a claim upon which relief can be granted, d) estoppel, e) waiver, and f) ratification;

5. There are no private causes of action under Section 17(a) of the Securities Act of 1933 and Sections 2 and 27 of the NASD Rules of Fair Practice; and

6. There was no fiduciary relationship between Respondents and Claimants.

#### RELIEF REQUESTED

Helma Newton requested damages of \$10,182.65 and each of the four trusts' requested damages of \$11,964.68. Claimants' also requested costs. The Respondents requested that the Claimants' claims be dismissed and awarded their costs in defending the claims asserted herein.

#### AWARD

On March 3, 1988 the NASD received the Claimants' Statement of Claim. On December 11 and 12, 1989 the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on February 25, 1988 by Helma H. Newton, individually and by Rich L. Brown as Trustee for the Newton Trusts, by William D. Nelson on behalf of Respondent Boettcher & Company, Inc. on July 15, 1988, and by Brian R. Bennett on July 15, 1988. The hearing was held in three sessions in Denver, Colorado.

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. All the claims asserted by the Claimants against the Respondents are hereby dismissed;

2. The parties shall bear their own costs including attorneys' fees;

3. Pursuant to Section 43(b) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain as forum fees, the \$750.00 filing fee previously deposited with the NASD by the Claimants and the Respondents shall pay \$750.00 in forum fees to the NASD through its staff counsel.

Presiding Arbitrators

Dated: \_\_\_\_\_ /S/ \_\_\_\_\_  
William F. Skewes, Esq.  
Presiding Chair

Dated: \_\_\_\_\_ /S/ \_\_\_\_\_  
Steven Meyrich, Esq.

Dated: \_\_\_\_\_ /S/ \_\_\_\_\_  
Frank L. Miller