

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Richard A. Kliefoth

Claimant

and

Thomson McKinnon Securities, Inc. and
Clifford Fields

Respondents

AWARD
Case No. 88-01096

CASE SUMMARY

In a claim filed with the NASD on April 6, 1988, Claimant Richard A. Kliefoth, individually and as executor of the estate of Marion Kliefoth, ("Kliefoth") alleged that Respondents Thomson McKinnon, Inc. ("Thomson McKinnon") and Clifford Fields ("Fields") engaged in fraudulent conduct violative of the Securities and Exchange Act of 1934 and the Securities Act of 1933. Other causes of action alleged were negligence, common law fraud, constructive fraud, excessive trading of securities in Kliefoth's account and that unsuitable securities were purchased for Kliefoth's securities account in contravention of their conservative investment objectives which conduct violated the NASD Rules of Fair Practice.

Thomson McKinnon and Fields maintained that the demand for arbitration failed to state a claim upon which relief could be granted and denied any liability to Kliefoth. Additionally, Thomson McKinnon and Fields asserted that the claims were time barred by applicable statutes of limitation.

RELIEF REQUESTED

Kliefoth requested actual damages of \$357,000, punitive damages of \$1,000,000, attorney's fees and costs. Thomson McKinnon and Fields requested dismissal of the claims.

AWARD

On September 7 and 8, 1989, October 5 and 6, 1989, November 7, 8, 28 and 29, 1989 in St. Louis, Missouri during a hearing lasting 10 sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on September 25, 1988 by Claimant Richard A. Kliefoth, and on December 30, 1988 by Clifford Fields as an individual and on behalf of the Respondent Thomson McKinnon Securities, Inc.

The arbitration panel, having considered the pleadings, the memorandum, 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 claims in Claimants' Petition are denied; except paragraph 2(c) of Count III in which the panel awards Forty Nine Thousand Seven Hundred Ninety Six Dollars and Six Cents (\$49,796.06) to Claimants based upon ordinary negligence only.

The award is granted upon the failure of Respondents to follow the Claimants' instruction to sell Sunrise Savings & Loan Securities.

2. The panel further denies all claims under Cause No. 87-02108 (CA) now pending in the United States District Court, Eastern District, Missouri-Eastern Division.

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

4. Claimants request for punitive damages are hereby denied.

5. Pursuant to Section 43(b) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall refund the \$750.00 filing fee previously deposited with the NASD by the Claimant and Respondent is assessed and shall pay to the NASD the sum of \$1000.00 as forum fees.

Dated: 6/5/90

By the Panel

/S/

Herbert Lasky
Presiding Chair

Dated: _____

/S/

Albert G. Webber, III

Dated: _____

/S/

Dwight E. Cole

The arbitration panel, having considered the pleadings, the memorandum, 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 claims in Claimants' Petition are denied; except paragraph 2(c) of Count III in which the panel awards Forty Nine Thousand Seven Hundred Ninety Six Dollars and Six Cents (\$49,796.06) to Claimants based upon ordinary negligence only.

The award is granted upon the failure of Respondents to follow the Claimants' instruction to sell Sunrise Savings & Loan Securities.

2. The panel further denies all claims under Cause No. 87-02108 (CA) now pending in the United States District Court, Eastern District, Missouri-Eastern Division.

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

4. Claimants request for punitive damages are hereby denied.

5. Pursuant to Section 43(b) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall refund the \$750.00 filing fee previously deposited with the NASD by the Claimant and Respondent is assessed and shall pay to the NASD the sum of \$1000.00 as forum fees.

By the Panel

Dated: _____

/S/

Herbert Lasky
Presiding Chair

Dated: 5/31/90

/S/

Albert G. Webber III
Albert G. Webber, III

Dated: _____

/S/

Dwight E. Cole

The arbitration panel, having considered the pleadings, the memorandum, 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 claims in Claimants' Petition are denied; except paragraph 2(c) of Count III in which the panel awards Forty Nine Thousand Seven Hundred Ninety Six Dollars and Six Cents (\$49,796.06) to Claimants based upon ordinary negligence only.

The award is granted upon the failure of Respondents to follow the Claimants' instruction to sell Sunrise Savings & Loan Securities.

2. The panel further denies all claims under Cause No. 87-02108 (CA) now pending in the United States District Court, Eastern District, Missouri-Eastern Division.

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

4. Claimants request for punitive damages are hereby denied.

5. Pursuant to Section 43(b) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall refund the \$750.00 filing fee previously deposited with the NASD by the Claimant and Respondent is assessed and shall pay to the NASD the sum of \$1000.00 as forum fees.

By the Panel

Dated: _____

/S/

Herbert Lasky
Presiding Chair

Dated: _____

/S/

Albert G. Webber, III

Dated: 6/4/90

/S/

Dwight E. Cole
Dwight E. Cole