

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

EILEEN F. BARCUS

Claimant

v.

FIRST ENCO SECURITIES, INC. AND  
JOHN S. BODOLAY

Respondents

Case No. 88-01374

CASE SUMMARY

On or about April 29, 1988, the Claimant filed this claim against the Respondents for unsuitable security transactions, fraud and negligence. Claimant alleged that Respondent Bodolay caused himself to be paid a \$12,500.00 commission for arranging the sale of her family business when he did not materially assist in the transaction. In addition, Ms. Barcus alleged that Bodolay made recommendations for the purchase of real estate limited partnerships and a whole life insurance policy which were unsuitable for her. The Claimant stated that six of the limited partnership investments were sponsored by the owner of Respondent, First Enco Securities, Inc. and that Respondent Bodolay acted as a principal promoter of the seventh. The Claimant contended that the recommendations were made in reckless disregard for the Claimant's best interests and therefore constituted negligence and fraud on the part of the Respondents.

The Respondents denied that the recommendations were unsuitable and stated that the total investment proposals included appropriate amounts of safety, diversity, liquidity and return. Respondents contended that the dispute regarding the fee paid for the sale of Claimant's business and the dispute regarding the commission on the life insurance policy are not within the jurisdiction of this forum. For their counterclaim, Respondents claim that Ms. Barcus is delinquent on installment payments for two of the limited partnerships and sought the recovery of the commissions they would have earned.

RELIEF REQUESTED

The Claimant sought the recovery of \$197,250.00 in exchange for the return of the real estate limited partnership interests. Ms. Barcus also requested the return of the \$12,500 fee and the commission from the whole life policy. In addition, the Claimant asked for interest, costs and attorneys fees, plus punitive damages. The Respondents asked that the claims be dismissed. For their counterclaim, Respondents sought \$1,050.00 plus interest, costs and attorneys' fees.

Dated 10/12/89

## PROCEDURAL

The panel denied the Respondents' Motion to dismiss the claims relating to the insurance commission and sale of business commission and heard evidence from the parties on these issues. The hearing was held on May 23, 1989 in Indianapolis, Indiana and lasted 2 sessions. Submission agreements were signed by the Claimant on April 6, 1988, and by Respondent John S. Bodolay individually and on behalf of First Enco Securities, Inc. on June 30, 1988.

## AWARD

The undersigned arbitrators, having considered, the pleadings, the testimony, the evidence presented at the hearing and the post hearing submissions, have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent First Enco Securities, Inc. is hereby liable for and shall pay to the Claimant the sum of \$183,176.50 in cash, inclusive of interest. Upon receipt of said sum, Claimant shall tender and deliver her certificates of interest in the following:

Enco Properties XII	1 Unit	Cert. #12-27
Enco Florida Fund	100 Units	Cert. #FF-01
Sarasota Boulevard Apartments, Ltd.	2 Units	Cert. #13-06
Enco Properties XIV, Ltd.	1 Unit	Cert. #14-04
Westminster Chase Apartments	1 Unit	Cert. #19-37

2. Respondent Bodolay is hereby liable for and shall pay to the Claimant, the sum of \$38,984.38 in cash, inclusive of interest. Upon receipt of said sum, the Claimant shall tender and deliver to Respondent Bodolay, her certificate of interest in the Juliana Shores Limited partnership.

3. In addition to the amount set forth in item 2 above, Respondent Bodolay is hereby liable for and shall pay to the Claimant the sum of \$9,500.00, without interest, for the fee paid upon the sale of her business.

4. No punitive damages shall be awarded;

5. All counterclaims of the Respondents are hereby dismissed in all respects;

6. Each party shall bear its own costs and expenses;

7. Having found the authority to award attorneys fees pursuant to the Indiana Securities Act as cited by the Claimants counsel, we determined the reasonable amount to be \$75,000.00. The Respondent First Enco shall be responsible for 2/3 of said amount and shall pay to the Claimant \$50,000.00 in addition to the amount specified in item 1 above as attorneys fees.

The Respondent Bodolay shall pay to the Claimant \$25,000.00 in addition to the amounts specified in items 2 and 3 above, as attorneys fees; and

8. Pursuant to Section 43 of the NASD Code of Arbitration Procedure. Respondents First Enco Securities, Inc. and Bodolay are each assessed \$750.00 as forum fees with each Respondent directed to pay \$375.00 to the Claimant and \$375.00 to the NASD.

Dated: 10-2-89

Arbitrators Concurring

Robert H. Brunner  
Robert H. Brunner, Esq.  
Presiding Chair

Dated: 10-5-89

George W. Harding  
George W. Harding

Dated: 10-5-89

Dorothy M. Geisler  
Dorothy M. Geisler, Esq.

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NASD No.  
88-01374  
Report of  
Arbitrators

The undersigned arbitrators heard testimony in the above-captioned matter relating to the sale of real estate limited partnerships by the Respondents. It is the feeling of this panel that the Surveillance Department should investigate the practices of First Enco Securities, Inc. relative to the supervisory review for suitability in the sale of limited partnerships and the adequacy of the firm's maintenance of records relative to the marketing and sale of such securities.

In addition, testimony indicated an inadequacy in the firm's methods of ensuring proper registration and licensing for both individuals and the firm, for the sale of securities in states outside of Florida.

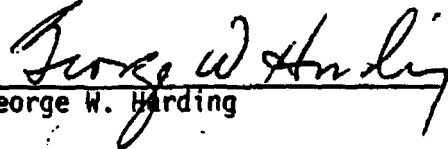
By the Panel



Robert H. Brunner, Esq.  
Chairman

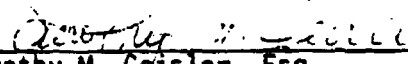
9-29-89

88-01374



George W. Harding

10-5-89



Dorothy M. Geisler, Esq.