

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

MARY F. COLBURN AND PATRICIA A. FORD,
TRUSTEES FOR THE SARAH A. KEMME TRUSTS
Claimants

and

RICHARD A. SARGENT, NEIDIGER, TUCKER,
BRUNER, INC., AND A.P.S. FINANCIAL CORP.
Respondents

CASE NO. 88-02696

CASE SUMMARY

A. Mary F. Colburn and Patricia A. Ford (Colburn and Ford are collectively referred to herein as "Claimants"), trustees of the Sarah A. Kemme Trust and the Sarah A. Kemme Special Trust, alleged as follows:

1. The Claimants invested certain assets of the two Kemme trusts with Richard H. Sargent ("Sargent") while Sargent was registered with A. G. Edwards, Holt, Olinger & Co., Inc., ("Holt"), and Neidiger, Tucker, Bruner, Inc. ("Neidiger") respectively. (Sargent, Holt, and Neidiger are collectively referred to herein as "Respondents");

2. Respondents violated NASD Article III Section 2, Paragraph 2152 by failing to recommend suitable securities to the Claimants, and

3. Respondents' breached their fiduciary obligations to the Claimants.

B. Sargent and Neidiger alleged as follows:

1. They denied all claims of the Claimants;

2. Claimants were aware of Sargents contrarian investment strategy and the risks associated therewith;

3. Claimants authorized all transactions and made all the investment decisions regarding all trades in the account;

4. The Claimants as Trustees failed to perform their duties as Trustees of the trusts;

5. There is no private right of action under Article III, Section 2 of the NASD Rules of Fair Practice;

6. Claimants substantial withdrawals contributed to the damages for which the Claimants seek to recover;

7. Neidiger properly supervised Sargent;
 8. Claimants failed to mitigate their damages; and
 9. Claimants claims are barred by the statute of limitations, statute of frauds, and the doctrines of ratification, waiver, estoppel, and laches.
- C. Respondent APS Financial Corporation ("APS") alleged as follows:
1. It denied all claims of the Claimants;
 2. Sargent was never an agent or employee of APS, or its predecessor Holt prior to August 1, 1982 or subsequent to January 31, 1984;
 3. APS alleged the same affirmative defenses as Sargent and Neidiger as set forth in Paragraphs B 5 and 9 above and further alleged that such claims are barred by the doctrines of assumption of the risk, contributory negligence, and failure to state a claim upon which relief can be granted; and
 4. Claimants losses were caused by unforeseen market circumstances.

RELIEF REQUESTED

The Claimants requested damages of Ninety Thousand Dollars (\$90,000.00). The Respondents requested that all claims of the Claimants be dismissed and they be awarded their attorneys' fees and costs.

AWARD

The NASD received the Claimants' claim on August 26, 1988. On January 8th and 11th, 1990 during a hearing lasting four sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants Mary Frances Colburn and Patricia A. Ford as trustees for the Sarah A. Kemme Trust and Special Trust, by Charles C. Bruner on behalf of Respondent Neidiger, Tucker, Bruner, Inc. on October 11, 1988, on October 11, 1988 by Respondent Richard H. Sargent, and on October 26, 1988 by Samuel Granett on behalf of APS Securities Corporation successor to Holt, Olinger & Co., Inc. The hearing was held at the NASD District Offices 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 claims of the Claimants asserted against A.P.S. and/or Holt are hereby dismissed;

2. Neidiger and Sargent are jointly and severally liable for and shall pay to the Claimants' Six Thousand Dollars and 00/100 cents (\$6,000.00);

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

4. Pursuant to Section 43(b) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall refund as forum fees, the \$500.00 filing fee previously deposited with the NASD by the Claimants and Neidiger and Sargent shall pay to the NASD Two Thousand Dollars (\$2,000.00) as forum fees through its staff counsel.

By the Panel

Dated: _____ /S/ Robert W. Smedley, Esq.
Presiding Chair

Dated: _____ /S/ Robert L. Druva

Dated: _____ /S/ Dunn Krah1

Date Served: 1-22-90