

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Genevieve F. Klein  
John W. Klein

Claimants

vs.

Thomson McKinnon Securities, Inc.  
Richard Byerly

Respondents

CASE #88-03609  
AWARD

CASE SUMMARY

Claimants assert that Respondents made misrepresentations concerning the value of stocks held in their account. Further that because of their reliance on the misrepresentations because they were unable to finance a real estate transaction they suffered damages. Claimants assert that Respondent Byerly admitted his misrepresentation and that Thomson McKinnon is liable under the theory of Respondent superior, and under control provisions of Federal Securities Laws.

Respondent Thomson McKinnon denies the allegations and asserts that all trades were described in confirmations and account statements and were therefore accepted, adopted and ratified. Thomson McKinnon asserts affirmative defenses of estoppel, waiver, laches and ratification. Respondent Byerly contends that the Claimants did not make him aware of changed circumstances. Byerly denies stating that either he or Thomson McKinnon would make the Claimants whole or admitting any fraud.

Respondent Byerly contends that approximately \$18,000.00 in checks he tendered to the Kleins were issued while Respondent Byerly was under mental duress due to his father's illness. He counterclaims for that amount.

RELIEF REQUESTED

Genevieve Klein seeks \$56,332.00 in damages for losses in her account, as well as \$36,320.00 reflecting higher mortgage payments incurred due to the unavailability of anticipated funds from the trading account. She also seeks compensatory damages representing the return she would have received had her funds been properly invested; unspecified punitive damages and interest.

John Klein seeks \$18,172.00 in damages for losses in the account as well as \$43,113.00 in lost wages; lost returns and interest, compensatory damages, punitive damages.

Respondent Byerly counterclaims for \$18,700.00 and seeks dismissal. Respondent Thomson McKinnon seeks dismissal and costs.

AWARD

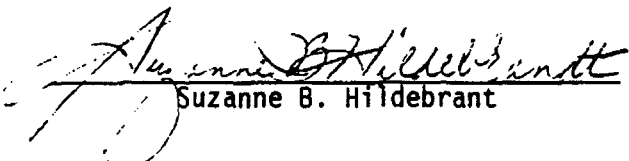
On August 29 and October 17, 1989, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on November 13, 1988 and by Respondent Thomson McKinnon Securities, Inc. on January 31, 1989 and by Respondent Richard Byerly on February 3, 1989. The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents Thomson McKinnon Securities, Inc. and Richard Byerly be and hereby are jointly and severally liable and shall pay the Claimant Genevieve F. Klein the sum of Twenty Eight Thousand Eight Hundred Seventeen Dollars and No Cents (\$28,817.00), inclusive of interest.
2. Respondents Thomson McKinnon Securities, Inc. and Richard Byerly be and hereby are jointly and severally liable and shall pay the Claimant John W. Klein the sum of Thirteen Thousand Eight Hundred Fifty Dollars and No Cents (\$13,850.00), inclusive of interest.
3. The counterclaim by Respondent Byerly be and hereby is dismissed.
4. The parties shall each bear their respective costs including attorney's fees.
5. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$750.00 filing fee previously deposited by the Claimants, and assess an additional \$2,250.00 in fees jointly and severally on Respondents Thomson McKinnon Securities, Inc. and Richard Byerly. Also, Respondents Thomson McKinnon and Byerly be and hereby are jointly and severally liable and shall pay Claimants the sum of \$750.00 initially deposited by them.

ARBITRATORS CONCURRING

 11/10/89  
Joseph R. Lally

 12/13/89  
Dr. Hubert Kauffman

 12/23/89  
Suzanne B. Hildebrandt

DATED: December 27, 1989