

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

LINDA MAROONEY

Claimant

and

BOETTCHER & COMPANY
FRANK ZIEG AND KRIS HAGER

Respondents

CASE NO. 89-00013

CASE SUMMARY

In a claim filed on or about January 20, 1989 the Claimant alleged that Frank Zieg, a representative of Boettcher & Co. presented her with proposed investments in mutual funds which would provide a minimum monthly income of \$664.00. The claimant further alleged that the commissions were to be 2% or less on each fund. Ms. Marooney claimed that, based upon these representations, she left her job, intending to live on the income from these investments. She alleged that when the investments did not produce the promised return, she ordered that the mutual funds be sold. When she called to verify the sale, she was told that her account had been taken over by Mr. Hager. Thereafter, Mr. Hager recommended purchases in Meldridge, Inc. and other stocks which the Claimant alleges were unsuitable.

Respondents Boettcher and Zieg denied that Ms. Marooney informed them that she intended to live off her investments. They stated that Mr. Zieg presented her with investment suggestions which were appropriate for her stated investment objectives and for the income and net worth she represented to them. They denied that the load of any of the mutual funds was represented to be 2% or less. They alleged that Ms. Marooney made changes in her investment objectives and needs when Mr. Hager took over the account and that he made recommendations which were appropriate for those needs. Boettcher and Zieg also raised the affirmative defenses of waiver, estoppel and laches.

Mr. Hager adopted the answer filed by Respondents Boettcher and Zieg.

RELIEF REQUESTED

The Claimant sought the recovery of damages in excess of \$5,000 plus fees.

The Respondents asked that the claims be dismissed and that forum fees and costs be assessed against the Claimant.

AWARD

On September 11, 1989, in Denver, Colorado, during a hearing lasting one session, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed on January 16, 1989 by Claimant, on March 23, 1989 by Respondent Frank Zieg and on March 22, 1989 by William Nelson on behalf of Respondent Boettcher & Company, Inc.

Mr. Hager did not file a submission agreement but adopted the answer of the other Respondents. He appeared at the hearing and was represented by counsel. Mr. Hager asked to be dismissed from the proceedings based upon inadequate notice of Ms. Marooney's claims. The Motion was denied, but the Respondents were offered the option of postponing the case to further prepare for the hearing. Mr. Hager elected to proceed and the hearing went forward. I found that having been registered with Boettcher & Company at the time of this dispute. Mr. Hager is required by the NASD By Laws and by Section 12 of the Code of Arbitration Procedure to arbitrate this matter and is therefore bound by this award.

Having considered the pleadings, the testimony, and the evidence presented at the hearing, I have decided in full and final resolution of the issues submitted for determination as follows:

1. All claims of the claimant against Respondent Frank Zieg are hereby dismissed in all respects;

2. Respondents Boettcher & Company and Kris Hager are hereby jointly and severally liable for and shall pay to the Claimant, the sum of Four Thousand Fifty One Dollars (\$4,051.00) in cash, inclusive of interest;

3. I find the authority to award attorneys' fees pursuant to the Securities and Exchange Act of 1934 and find the reasonable amount to be \$500.00. Respondents Boettcher and Hager are therefore jointly and severally required to pay to the Claimant \$500.00 in addition to the amount specified in item 2 above;

4. Pursuant to Section 43(b) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc., the Respondents Hager and Boettcher will be charged with forum fees of \$200.00 which amount shall be payable directly to the Claimant

Dated: 11/17/89 Presiding Arbitrator
15 Edmund Epstein, Esq.

Date served 11/20/89

AWARD

On September 11, 1989, in Denver, Colorado, during a hearing lasting one session, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed on January 15, 1989 by Claimant, on March 23, 1989 by Respondent Frank Zieg and on March 22, 1989 by William Nelson on behalf of Respondent Boettcher & Company, Inc.

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Dated: 11/17/89 Presiding Arbitrator
15 Edmund Epstein, Esq.

Date served 11/30/89