

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Verna Bauer

89-00526

Name of Respondent(s)

First Securities Corporation.,
William D. Johnson, C.A. Smith
and Ronald Hansen

CASE SUMMARY

In an Amended Statement of Claim filed with the NASD on August 4th, 1990, Claimant Verna Bauer ("Bauer") alleged that Respondent William D. Johnson ("Johnson") made false statements for the purpose of and which did induce Claimant to invest in mutual funds, stocks and limited partnerships in violation of federal and state Securities law, as well misrepresentation and common law fraud; engaged in excessive trading activity constituting churning; and made unsuitable recommendations and concentrations of trading inappropriate for the age, financial circumstances and sophistication of Claimant. The claimant further alleged that C.A. Smith ("Smith") and Ronald Hansen ("Hansen") were "controlling persons" within the meaning of the state statute and were liable personally for failing to supervise Johnson.

In a Statement of Answer filed with the NASD on August 24th, 1989, Respondents Smith, Hansen, and First Securities Corporation denied the allegations of the Statement of Claim, stating affirmatively that Claimant was solely the client of Johnson; that no false representations were made; trading was generally unsolicited; the trades were suitable and any decrease in value of the partnerships was due to unforeseen circumstances; and that trading actually resulted in a net profit to Bauer.

In a State of Answer filed in May of 1989, Respondent Johnson denied the the allegations of the Statement of Claim, stating that Bauer was a willful and independent investor, suitable and qualified for investments he recommended, who also made a number of trades on an unsolicited basis. In addition, Johnson alleges as an affirmative defense that certain claims of Bauer were barred by Wisconsin's three year statute of limitations.

RELIEF REQUESTED

Claimant requested that an award issue in the amount of \$21,234.99, plus the loss of interest on the fund deposited from 1983 to January 1st, 1989 in the amount of \$25,849.56, plus the costs to claimant to obtain a mortgage amounting to \$5424.48 for a total of \$52,509.03. In the alternative, Claimant requests the sum of \$30,107.00 for trading losses plus the mortgage cost of \$5424.48 for damages totaling \$35,531.48. In addition, claimant requested punitive damages of \$10,000.00 against each respondent, attorneys' fees and costs. Respondents Smith, Hansen and First Securities Corporation requested that Claimant withdraw her Statement of Claim.

Respondent Johnson requested that the Statement Claim be denied in its entirety and that he be awarded his costs, including actual attorneys' fees.

AWARD

On July 10, 1990 and July 11, 1990 in Milwaukee, Wisconsin, during a hearing lasting four (4) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on February 7, 1989 by Claimant Verna Bauer, on May 18, 1989 by Clarence A. Smith on behalf of Respondent First Securities Corporation, on May 3, 1989 by Respondent Ronald S. Hansen and on April 25th, 1989 by Respondent William D. Johnson.

Respondent Johnson motioned to dismiss the Statement of Claim at the close of claimants' case and reasserted the matter at the close of all testimony. After an executive Session, the panel ruled that the motion would preliminarily be denied, but taken under advisement.

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. Respondent Johnsons' Motion to Dismiss is denied.
2. The Statement of Claim is hereby dismissed and denied in its entirety.
3. The parties shall bear their own respective costs, including attorneys' fees.

4. Pursuant to Section 43(c) of the code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain as forum fees, the \$400.00 filing fee previously deposited with the NASD by the Claimant Verna Bauer and Respondents William Johnson, C.A. Smith, Ronald Hansen and First Securities Corporation shall be jointly and severally liable for and shall pay additional forum fees to the NASD in the amount of \$1200.00.

By the Panel

Dated: _____

Morton J. Schmidt, Esq.
Presiding Chair

Dated: 8-27-90

Herbert Neuer, Esq.

Dated: _____

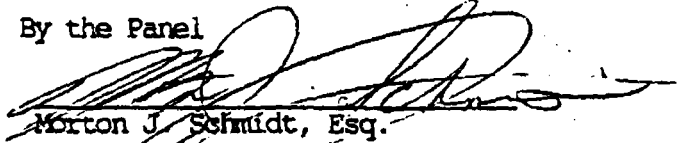
R. Ron Heiligenstein

4. Pursuant to Section 43(c) of the code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain as forum fees, the \$400.00 filing fee previously deposited with the NASD by the Claimant Verna Bauer and Respondents William Johnson, C.A. Smith, Ronald Hansen and First Securities Corporation shall be jointly and severally liable for and shall pay additional forum fees to the NASD in the amount of \$1200.00.

Dated: _____

8/27/90

By the Panel


Morton J. Schmidt, Esq.
Presiding Chair

Dated: _____

Herbert Neuer, Esq.

Dated: _____

R. Ron Heiligenstein