

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Martha E. Koessler,

Claimant

and

89-02458

Martin R. Fishgold,

Respondent

CASE SUMMARY

In a claim filed with the NASD on or about September 1, 1989, Martha E. Koessler ("Claimant") alleged that Martin R. Fishgold ("Respondent") made material misrepresentations and unsuitable recommendations in connection with her purchase of shares of Consolidated Capital Income Trust ("CCIT") and Consolidated Capital Special Trust ("CCST").

In his answer filed with the NASD on or about December 1, 1989, Respondent stated that the claims are time barred by the Statute of Limitations. Respondent further stated that the Claimant was fully advised of all information available to him at the time of her purchase and that the products seemed to match Claimant's stated investment objectives.

OTHER ISSUES

Claimant requested leave to file an amended statement of claim at the onset of the hearing. Respondent had no objection to the filing of the amended statement of claim and it was accepted by the panel.

The Amended Statement of Claim in addition to the claims alleged in the original claim alleged violations of the Arizona Racketeering Law; breach of fiduciary duty; negligence; and breach of contract.

RELIEF REQUESTED

Claimant requested an award in the amount of \$34,000.00.

Respondent requested that the Statement of Claim be dismissed.

In the amended Statement of Claim, Claimant requested treble damages under the Arizona Racketeering Law, interest and attorneys fees.

AWARD

On Wednesday, September 19, 1990 in Scottsdale, Arizona during a hearing lasting a total of one (1) session, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on August 22, 1989 by Claimant Martha E. Koessler on November 28, 1989 by Respondent Martin R. Fishgold.

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 Martin R. Fishgold shall be and hereby is liable for and shall pay to the Claimant Martha E. Koessler the sum of Sixteen Thousand Eight Hundred Dollars (\$16,800.00) which sum includes interest;

2. The claims asserted pursuant to the Arizona Racketeering Law shall be and hereby are dismissed in their entirety;

3. Each party shall bear its own costs and expenses including attorneys fees incurred in this matter not specifically enumerated herein;

4. The parties have agreed to the procedure which allows the panel to either execute a handwritten copy of this award or sign counterpart copies of this award and the forwarding of a typed conformed copy of this award to the parties; and

5. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall refund \$200.00 of the filing fee in the amount of \$400.00 previously deposited with the NASD by the Claimant Martha E. Koessler. Respondent Martin R. Fishgold shall pay to the NASD the sum of \$200.00 as forum fees.

September 19, 1990

September 19, 1990

S/ Robert Hubbard

September 19, 1990