

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Elizabeth J. Kizer

89-03270

Name of Respondent(s)

Newhard Cook & Co., Inc.
Jerome Stein
Westport Financial Group, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about November 21, 1989, Claimant Elizabeth J. Kizer ("Kizer") alleged that Respondents Jerome S. Stein ("Stein"), Newhard, Cook & Co. ("Newhard Cook") and Westport Financial Group, Inc. ("Westport Financial") invested \$21,000 in cash with the stipulation that Kizer get maximum return with no risk and that she have ready access to her finances because she was planning to buy a home in St. Louis. Kizer alleged that Stein mishandled her funds, engaged in margin trading without her consent, misrepresented himself and made unsuitable investments in Putnam and Scheild mutual funds and treasury bonds.

In a statement of answer filed with the NASD on or about February 15, 1990, Newhard Cook denied any liability to Kizer and specifically denied that the investments made for her account were unsuitable or unauthorized. Newhard Cook alleged that Kizer wished for higher returns on her investments than that available from banks and also wished for more liquidity than bank certificates of deposit. Newhard Cook alleged that Kizer understood the risks of higher return and that the mutual funds and treasury bonds were suitable for her.

In a statement of answer filed with the NASD on or about March 6, 1990, Westport Financial requested dismissal of the claim.

Stein did not file an answer to the statement of claim.

RELIEF REQUESTED

Kizer requested return of her original investment of \$21,000.00, 25.3% interest compounded, costs and punitive damages. Newhard Cook requested dismissal of the claim and an award of costs and attorney's fees. Westport Financial requested dismissal of the claim.

PROCEDURAL MATTERS

Westport Financial was placed into involuntary bankruptcy and then consented to entry of an order for relief under Chapter 7 of Title 11 U.S.C. Robert Fehman appeared at the hearing on behalf of Westport Financial and moved that the arbitration be stayed against Westport Financial. The panel granted the motion. Newhard cook moved to strike certain exhibits from Kizer's claim. The panel denied that motion. Newhard Cook also moved to strike Kizer's claim for punitive damages. The panel took this motion under advisement until it issued the award.

AWARD

On January 24, 1991 in St. Louis, Missouri during a hearing lasting two (2) sessions, the undersigned arbitrator(s) heard the controversy between the parties as set forth in submissions to arbitration signed on November 15, 1989 by Claimant Elizabeth J. Kizer, on February 1, 1990 by Harry W. Newhard on behalf of Respondent Newhard Cook & Company and on March 23, 1990 by Robert M. Fehman on behalf of Respondent Westport Financial Group, Inc.

Respondent Jerome S. Stein did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure, and having appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD.

After considering the pleadings, the testimony, and the evidence presented at the hearing, the arbitrator(s) has/have decided in full and final resolution of the issues submitted for determination as follows:

1. Kizer's claim asserted against Newhard Cook and Stein is denied and dismissed in its entirety;
2. Newhard Cook's motion to dismiss Kizer's claim for punitive damages is denied and dismissed as moot;
3. The parties shall each bear their respective costs, expenses and attorney's fees incurred in this matter; and

4. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the hearing session deposit in the amount of \$400.00 previously deposited with the NASD by the Claimant Elizabeth J. Kizer. Newhard Cook is assessed additional forum fees of \$400.00 which sum is payable to the NASD.

Dated: 2-17-91

By the Panel

Robert M. Livingstone
Robert Livingstone, Esq.
Chairman

Dated: _____

Tom K. Smith

Dated: _____

Richard L. Johannesman
Industry Arbitrator

Date Served: 2/27/91

4. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the hearing session deposit in the amount of \$400.00 previously deposited with the NASD by the Claimant Elizabeth J. Kizer. Newhard Cook is assessed additional forum fees of \$400.00 which sum is payable to the NASD.

By the Panel

Dated: _____

Robert Livingstone, Esq.
Chairman

Dated: 2/15/91

Tom F. Smith

Tom F. Smith

Dated: _____

Richard L. Johannesman
Industry Arbitrator

Date Served: _____

4. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the hearing session deposit in the amount of \$400.00 previously deposited with the NASD by the Claimant Elizabeth J. Fizer. Newhard Cook is assessed additional forum fees of \$400.00 which sum is payable to the NASD.

By the Panel

Dated: _____

Robert Livingstone, Esq.
Chairman

Dated: _____

Tom K. Smith

Dated: 2-16-91

Richard L. Johannesman
Richard L. Johannesman
Industry Arbitrator

Date Served: _____