

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Joan M. Brown

89-03423

Name of Respondent(s)

Lee E. Mikles

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about December 6, 1989, Joan M. Brown ("Claimant") alleged that Lee E. Mikles ("Respondent") while employed at Drexel Burnham Lambert, Inc. made unsuitable recommendations and breached his fiduciary duty to her. In particular, Claimant alleged that Respondent recommended purchases of Southmark Corporation and Integrated Resources, Inc., highly speculative stocks. Claimant also alleged violations of A.R.S. 13-2304 ("Arizona RICO").

In the joint Answer filed with the NASD on or about January 25, 1990 Respondent and Drexel Burnham Lambert, Inc. denied that the investments were unsuitable. In particular, Respondent stated that Claimant had stated that her investment objectives were income and growth and that the stocks recommended and purchased were regarded as suitable for a customer in Claimant's financial condition. Both companies that were recommended had maintained profitable track records and were considered sound investments within the industry. Respondent stated that Claimant had indicated that she understood the risks and rewards involved in her investments. The following affirmative defenses were also alleged: failure to state a claim upon which relief may be granted; assumption of the risk; ratification; estoppel and laches.

PROCEDURAL SUMMARY

Drexel Burnham Lambert, Inc. was dismissed without prejudice as a result of its filing for bankruptcy.

The parties agreed to the execution of a handwritten award or signatures

9/01206

in counterpart and the receipt of a typed, conformed award with the original on file with the NASD.

RELIEF REQUESTED

Claimant requested an award in the amount of \$50,000 in compensatory damages, treble damages, pursuant to the Arizona RICO Statute, interest and attorneys fees and costs.

Respondent requested that the Statement of Claim be dismissed in its entirety and that costs be assessed against Claimant.

AWARD

On Monday, December 10, 1990 in Scottsdale, Arizona during a hearing lasting a total of two (2) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on December 1, 1989 by Claimant Joan M. Brown and on January 15, 1990 by Respondent Lee E. Mikles.

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 Lee E. Mikles shall be and hereby is liable for and shall pay to the Claimant the sum of Seven Thousand Five Hundred Dollars (\$7,500.00);

2. Respondent Lee E. Mikles shall be and hereby is liable for and shall pay to the Claimant the sum of One Thousand Five Hundred Dollars (\$1,500.00) as attorneys fees;

3. The claims asserted under A.R.S. 13-2304 and the request for punitive damages shall be and hereby are denied;

4. The claim for interest shall be and hereby is denied;

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

6. 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 \$550.00 previously deposited with the NASD by the Claimant Joan M. Brown. The NASD shall refund the postponement

9/01206

deposit in the amount of \$750.00 previously deposited with the NASD by the Respondent Lee E. Mikles. Respondent Lee Mikles shall pay to the NASD the sum of \$750.00 and Claimant shall pay to the NASD the sum of \$200.00 as forum fees.

By the panel

Dated: December 10, 1990

/S/ Harold B. Klaiber

Dated: December 10, 1990

/S/ Jack Gunter

Dated: December 10, 1990

/S/ Michael W. Sillyman
Presiding Chair

Michael W. Sillyman dissents in the decision in paragraph 1 above regarding the amount of damages awarded and dissents in the decision to assess forum fees against Claimant in paragraph 6 above.