



N.A.S.D. AWARD

Arbitration

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
One East Broward Boulevard
Suite 1000
Ft. Lauderdale, Florida 33301
(305) 522-7391

In the Matter of the Arbitration Between

Name of Claimant(s)

Joseph and Mary Connor

90-00027

Name of Respondent(s)

J.W. Charles Securities
Kenneth Brown
Wendy Brown
J.W. Brown Investments dba K.W. Brown Co

Heard before the members of the Arbitration Panel:

William A. Fleck, Esq.
Eduardo J. Palacio, Esq.
Anthony A. Paetro, Esq.

CASE SUMMARY

This claim was filed with the NASD, Inc., on December 29, 1989. The hearing was conducted in Fort Lauderdale, Florida on November 7, 1990, with a total of 2 sessions.

Claimant, Joseph and Mary Connor ("the Connors"), alleged that Respondents, J.W. Charles Securities, Inc. ("J.W. Charles"), Kenneth Brown ("Ken Brown"), and K.W. Brown & Co. d/b/a K.W. Brown Investments ("Brown & Co."), were liable for: negligence; fraud; violation of Florida Securities Laws, breach of fiduciary duties; and, as it relates to J.W. Charles and Respondent, Wendy Brown, negligent supervision. Claimants alleged that Respondent, Brown, ignored their investment objectives; used unauthorized discretion; purchased and sold unsuitable stocks and bonds on behalf of Claimants; and, was not licensed to conduct business for J.W. Charles.

Respondent, J.W. Charles, alleged that it was the clearing broker for Brown & Co. and, as such, Mr. Brown was not required to be registered with them. J.W. Charles asserted affirmative defenses including: lack of proximate cause; compliance with all regulatory requirements; ratification; and, acquiescence..

Respondents, Brown & Co., Ken Brown, and Wendy Brown, filed their Statement of Answer on October 25, 1990, and alleged that: safety of principal was not an investment objective of Claimants; Claimants were informed of the risks involved with high current income and long term growth investments; Claimants

assumed the risks; the accounts were diversified; and, Claimants were kept informed of the status of their accounts. Respondents asserted affirmative defenses including: lack of proximate cause; compliance with applicable regulations; Respondents did not act to deceive or defraud Claimants and did not act negligently or with scienter; ratification; estoppel; and, Claimants' losses were caused by market forces.

RELIEF REQUESTED

Claimants requested damages in the amount of \$42,277.36, plus interest, punitive damages in the amount of \$10,000.00 and, costs. Respondents requested dismissal of the claim plus costs, and attorney's fees.

AWARD

On November 7, 1990, the arbitrators heard the controversy between the parties as set forth in submission to arbitration signed by Claimants on December 20, 1989, and by Respondents, J. W. Charles, on March 15, 1990, Ken Brown and Brown & Co., on November 7, 1990, and Wendy Brown, on October 19, 1990. The arbitration panel having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined in full and final resolution of the issues submitted for determination as follows:

1. 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 originals remain on file with the NASD.
2. Respondents, Ken Brown, Wendy Brown, and Brown & Co., are found liable, jointly and severally, and shall pay to the Claimants the amount of Eight Thousand Nine Hundred Seventy One and 00/100 (\$8,971.00) Dollars, plus interest of 12% from October 1987 thru September 1990 in the amount of Three Thousand Two Hundred Twenty Nine and 00/100 (\$3,229.00) Dollars for a total due to the Claimants of Twelve Thousand Two Hundred and 00/100 (\$12,200.00) Dollars.
3. Respondents, Ken Brown, Wendy Brown, and Brown & Co., are also found liable, jointly and severally, and shall pay to the Claimants the further amount of Ten Thousand and 00/100 (\$10,000.00) Dollars for punitive damages. The Panel finds that punitive damages are warranted by the conduct complained of, namely the unauthorized trades, unsuitable investments and lack of supervision being so egregious as to constitute gross negligence and a willful, wanton and reckless disregard of the rights of Claimants.
4. Pursuant to Section 43 of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of Eight Hundred and 00/100 (\$800.00) Dollars (2 sessions x \$400.00). Respondents, Ken Brown, Wendy Brown, and Brown & Co., are hereby assessed Eight Hundred and 00/100 (\$800.00) Dollars, jointly and severally, Four Hundred and 00/100 (\$400.00) Dollars of which shall be paid directly to the Claimants as a return of their filing fee, and Four Hundred and 00/100 (\$400.00) Dollars of which shall be paid to the National Association of Securities Dealers, Inc. The NASD, Inc. shall retain the Four Hundred and 00/100 (\$400.00) Dollar filing fee deposited by the Claimants in partial satisfaction of such forum fees.

5. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

OTHER ISSUES

1. This arbitration panel granted Claimants' Motion, pursuant to Section 25(b)(iii) of the NASD, Inc., Code of Arbitration Procedure, to bar Respondents, Ken Brown, Wendy Brown, and Brown & Co., from presenting any matter, arguments or defenses at the hearing for their failure to file an Answer within 20 business days from receipt of service of the Claim. This arbitration panel finds Claimants would be prejudiced by the late Answer and, therefore, barred Respondents, Ken Brown, Wendy Brown, and Brown & Co., from presenting any matter, arguments or defenses at the hearing but allowed Respondents to cross examine Claimants' witnesses.

2. Claimants dismissed, with prejudice, Respondent, J.W. Charles, from this arbitration at the time of the hearing and, therefore, the Claims against it are hereby dismissed.

ARBITRATORS CONCURRING

/s/
William A. Fleck, Esq.

/s/
Eduardo J. Palacio, Esq.

/s/
Anthony S. Paetro, Esq.

DATED: December 12, 1990