

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Alice Van Kirk

Claimant

90-00263

and

Jon Johnson

Respondent Third-Party Claimant

and

Dain Bosworth Incorporated

Third-Party Respondent

REPRESENTATION

Claimant was represented by: Frank McNulty, Esq. of O'Brien, Ehrick, Wolf, Deaner & Downing, Rochester, Minnesota.

Respondent Third-Party Claimant, Jon Johnson was represented by: John Warchol, Esq. of Warchol, Berndt & Hajak, Minneapolis, Minnesota.

Third Party Respondent, Dain Bosworth, Inc. was represented by: Carol A. Peterson, Esq. of Dorsey & Whitney, Minneapolis, Minnesota.

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about January 24, 1990 Claimant Alice Van Kirk ("Van Kirk") alleged that Respondent Jon Johnson ("Johnson") induced her to sell an annuity she owned and invest in a limited partnership. Van Kirk alleged that this investment was not appropriate for her and that Johnson misrepresented her financial condition when she invested in the partnership.

In an Answer and Third Party Claim filed with the NASD on or about March 16, 1990 Respondent Johnson alleged that Van Kirk wished to invest in the partnership as a diversification of her portfolio. Johnson alleged that Van Kirk was suitable for the partnership because she had a \$75,000 net worth which was an alternative requirement to invest in the partnership. Johnson alleged that

the settlement of Van Kirk's claim with Dain Bosworth released Johnson from any liability. Johnson asserted a third-party claim against Dain Bosworth for indemnification.

In a reply to the Third-Party claim filed on May 22, 1990 by Dain Bosworth, it was argued that Johnson was not entitled to indemnity under Minnesota Law and denied the allegations of the third party claim. Dain Bosworth cross claimed against Johnson for indemnity.

Johnson replied to the cross claim on July 24, 1990 and alleged that the cross claim failed to state a cause of action for indemnity.

RELIEF REQUESTED

Van Kirk requested damages of \$15,000 for her remaining 15 units of partnership, \$5000 in lost interest, \$400 as attorneys' fees and \$5000 in damage for stress and discomfort. Johnson requested dismissal of the claim and an indemnification from Dain Bosworth for attorney's fees, costs and any award made against him in favor of Van Kirk. Dain Bosworth requested dismissal of the third party claim and an award of indemnity from Johnson. Johnson requested dismissal of the cross-claim.

PROCEDURAL MATTERS

On April 29, 1991 in Minneapolis, Minnesota 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 January 1, 1990 by Claimant Alice Van Kirk and on May 11, 1990 by James L. Simon on behalf of Third Party Respondent Dain Bosworth, Inc.

Respondent Jon Johnson 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 answered the claim, 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.

AWARD

The arbitration panel having considered 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:

VAN KIRK'S CLAIM

1. Johnson is liable for and shall pay to Van Kirk the sum of \$15,000. In consideration for this payment Van Kirk shall transfer and assign all interest she has in 15 units of Dain Southeast Growth Properties Partnership to Johnson;

2. Johnson is also liable for and shall pay to Van Kirk the sum of \$4,700 in attorneys' fees. In awarding this sum the panel makes the award under the Minnesota Securities Act;

JOHNSON'S THIRD PARTY CLAIM

3. Dain Bosworth is liable for and shall indemnify Johnson in the sum of \$16,200. In consideration for this indemnity Johnson will transfer and assign all interest he receives from Van Kirk in the 15 units of Dain Southeast Growth Properties Partnership to Dain Bosworth;

DAIN BOSWORTH'S CROSS-CLAIM

4. Dain Bosworth's cross-claim against Johnson shall be and is hereby denied in its entirety;

5. The parties shall each bear all costs, fees and expenses not enumerated elsewhere 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 \$400.00 previously deposited with the NASD by the Claimant. Dain Bosworth shall reimburse Claimant for her deposit of \$400.00 with the NASD and is assessed additional forum fees payable to the NASD in the amount of \$400.00.

Dated:

Concurring Arbitrator(s) Signature

7-8-91

/S/ Peter W. Anson

Peter W. Anson, Esq.
Presiding Chair
Public Arbitrator

7-17-91

/S/ John Robert Kelly

John Robert Kelly
Industry Arbitrator

7-8-91

/S/ Wendy A. Sacha

Wendy A. Sacha
Public Arbitrator

Date Served: 7-26-91