

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Deborah D. Ervin, et al.

90-00553

Name of Respondent(s)

KMS Financial Services, Inc.
John A. Meyers, Jr.

Heard before:

Public/Industry

PUBLIC _____

INDUSTRY _____

Esq. PUBLIC _____

SUMMARY OF ISSUES

This case was filed with the National Association of Securities Dealers, Inc. ("NASD") on February 26, 1990. Claimants alleged that Respondents:

- 1) violated Oregon securities laws,
- 2) were negligent and negligent per se,
- 3) breached their fiduciary duty of trust or duty, and
- 4) sold unsuitable securities in violation of federal rule 10b-5.

Said allegations related to transactions in limited partnerships, life insurance policies and annuities, and mutual funds. Respondents contended that:

- 1) the investments and insurance purchased by Ervin through Respondents were suitable and consistent with the Ervins' stated, prudent goals and objectives,
- 2) the principal claimant, Ervin, was an informed, active participant in all investment decisions and subsequent portfolio monitoring,

- 3) Ervin, with the assistance of Respondents, had established and was maintaining an effectively diversified portfolio of quality investments when she chose to terminate her business relationship with Respondents, and
- 4) the accurate record shows that the Ervins were not damaged by, but rather profited from, the investments made through Respondents.

Respondents also asserted that Claimants failed to state a claim upon which relief can be granted and that Claimants were contributorily negligent in the liquidation of their portfolio which directly caused the alleged damages. Respondents also asserted a counterclaim against Claimants for frivolous arbitration.

DAMAGES AND RELIEF REQUESTED

Claimants requested actual damages of \$1,005,116.17 including prejudgment interest, exemplary damages in the amount of \$2,000,000, reasonable attorneys fees, costs, and disbursements. At the hearing Claimants reduced the claim to \$550,437 for general damages, \$2,000,000 for punitive damages, and requested \$39,950 for attorneys fees. Respondents, on their counterclaim, requested the panel to award Respondents their costs and fees, including attorney fees, costs associated with engaging KMS's general counsel, expert witness costs and fees and other direct out-of-pocket costs relating to this proceeding.

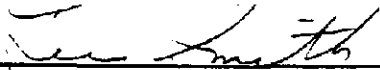
DAMAGES AND RELIEF AWARDED

On January 15, 16, 17, 21 and 22 the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant Deborah Ervin on October 16, 1989 and June 29, 1990, by Claimant David Ervin on November 14, 1989 and July 2, 1990, by Claimant Elizabeth Ervin on October 13, 1989 and July 2, 1990, by Deborah Ervin as trustee for Elizabeth and David Ervin on June 29, 1990, by Respondent KMS Financial Services, Inc. on May 15, 1990, and by Respondent John A. Myers, Jr. on May 16, 1990.

A prehearing conference by telephone was held on December 2, 1990 and constituted one hearing session. The evidentiary hearing was conducted in Portland, Oregon and lasted eleven sessions. 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. Respondents are liable for and shall pay to Claimant Deborah Ervin Gentling the sum of Thirty One Thousand Two Hundred Twenty Three Dollars Exactly (\$31,223). Said liability is joint and several.
2. Respondents are liable for and shall pay to Claimants David and Elizabeth Ervin Trust the sum of Thirty Four Thousand Four Hundred Nine Dollars Exactly (\$34,409). Said liability is joint and several.

3. The parties shall each bear their respective costs including attorneys' fees.
4. In accordance with Section 43 of the NASD Code of Arbitration Procedure, the NASD shall retain the \$1000.00 filing fee previously deposited by the Claimant.



Lee Smith