

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Helen Freund Gaines

Claimant

vs.

90-00631

Financial Planning Consultants, Inc.
and Gary Clermont

Respondents

REPRESENTATION OF PARTIES

Claimant Helen Freund Gaines was represented by Laurence Mass, Esq., Clayton, Missouri. Respondents Financial Planning Consultants, Inc. and Gary Clermont were represented by Kent S. Ghahremani, Esq. of Sussman, Schermer, Rimmel & Shifrin, St. Louis, Missouri.

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on March 2, 1990, Claimant Helen Freund Gaines ("Gaines") alleged that Respondents Financial Planning Consultants, Inc. ("FPC") and Gary Clermont ("Clermont") invested the cash estate of Gaines' deceased husband in Damson Institutional Energy L.P., Morgan Energy Partners, Phoenix Leasing Growth Fund - 1982 and Finalco Income Fund I-C. Gaines alleged that Respondents breached fiduciary duties owed her by recommending investments which were unsuitable for her given her financial condition.

In a statement of answer filed with the NASD on May 21, 1990, Respondent Clermont alleged that prospectuses outlining the risks were given to Gaines. Clermont also alleged that the investments were suitable for Gaines and that she met the suitability requirements for virtually all publicly offered investments.

In a statement of answer filed with the NASD on May 12, 1990, Respondent FPC alleged that Gaines was suitable for these investments and that the collapse of oil prices was beyond the control of Respondents. FPC also alleged that Clermont fully complied with the internal controls of FPC and obeyed the rules of full disclosure and fair practices. FPC further alleged that the degree of risk taken by Gaines was among the lowest.

RELIEF REQUESTED

Gaines requested damages of \$50,000 plus interest and costs. Respondents requested dismissal of the claims.

PROCEDURAL MATTERS

On June 24, 1991 in St. Louis, Missouri during a hearing lasting a total of two (2) session, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on February 28, 1990 by Claimant Helen Freund Gaines, on May 14, 1990 by Kingsley O. Wright on behalf of Respondent Financial Consultants, Inc. and on May 10, 1990 by Respondent Gary R. Clermont.

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, has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents are jointly and severally liable for and shall pay to Claimants without interest, the sum of \$37,000.00;
2. The NASD will retain the postponement fee paid to the NASD by Respondent FPC;
3. The parties shall each bear their own costs, expenses and attorney's fees incurred in this matter; and

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$120.00 claim filing fee and refund the hearing session deposit in the amount of \$280.00 previously deposited with the NASD by the Claimant. Respondents are jointly and severally assessed and shall pay to the NASD the sum of \$800 as forum fees.

Dated:

Panel Members Concurring

C. J. McEnery, Jr.
Presiding Chair
Public Arbitrator

August 16, 1991

Stephen Novack
Stephen Novack
Public Arbitrator

Hugh V. Murray
Industry Arbitrator

Date served by NASD: _____

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Dated:

Panel Members Concurring

8-16-91

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