

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Florence Wilma Elerbeck

90-00984

Name of Respondent

Boucher, Oehmke & Quinn

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. ("NASD"), Florence Wilma Elerbeck ("Claimant") alleged that Gary Anderson, a broker employed by Boucher, Oehmke & Quinn ("Respondent") made material misrepresentation regarding the commission to be paid from her investment in McKenzie Funds; that Mr. Anderson made unauthorized transactions in her account. Specifically, Claimant alleged that she attempted to withdraw \$2000.00 from the fund and Mr. Anderson withdrew a total of \$7000.00. Claimant alleged that she ordered Mr. Anderson to return the \$5000.00 to the McKenzie Fund and Mr. Anderson invested the money in Public Pay Phone Income Fund without her consent. Claimant further alleged that she was not a suitable investor in Public Pay Phone Income Fund.

In its Answer filed with the NASD on or about May 29, 1990, Respondent stated that Claimant signed a letter requesting the withdrawal of \$7,000.00 from McKenzie Funds and that she understood the risks of the investment in Public Pay Phone Income Fund. Respondent also asserted the following defenses: assumption of risk; contributory negligence; estoppel and statute of frauds.

PROCEDURAL MATTER

The parties agreed to the execution of a handwritten award or counterpart signatures and the receipt of a typed conformed copy of the award with the originals on file with the NASD.

RELIEF REQUESTED

Claimant requested an award in the amount of \$5000.00 and unspecified punitive damages.

Respondent requested that the Statement of Claim be dismissed and that costs and attorneys fees be assessed against Claimant.

### AWARD

On Thursday, December 13, 1990 in Scottsdale, Arizona during a hearing lasting a total of one (1) session, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on March 29, 1990 by Claimant Florence W. Elerbeck and on May 21, 1990 by Donald E. Oehmke on behalf of Respondent Boucher, Oehmke & Quinn.

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. Pursuant to 44-2001 A.R.S., rescission of the purchase of two units of Public Pay Phone Income Fund 1987-1 is hereby granted to Claimant. Accordingly, the Respondent Boucher, Oehmke & Quinn now known as Boucher Oehmke & Co. shall be liable for and shall pay to the Claimant Florence W. Elerbeck the sum of Five Thousand Seven Hundred Seventy Nine Dollars and Nineteen Cents (\$5,779.19) together with interest at the rate of 10% per annum from the date of December 13, 1990 until paid;

2. Upon receipt of payment of the sums enumerated in paragraph one (1) above, the Claimant shall immediately cause her interest in two units of Public Pay Phone Income Fund 1987-1 to be transferred to Boucher, Oehmke & Co.;

3. No punitive damages are awarded herein. Arbitrator Owen dissents from the decision to not award punitive damages and would have awarded punitive damages to Claimant;

4. Each party shall bear its own costs and expenses incurred in this matter not specifically enumerated herein; and

5. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall refund the hearing session deposit in the amount of \$300.00 previously deposited with the NASD by the Claimant. Respondent Boucher, Oehmke & Quinn shall pay to the NASD the sum of \$400.00 as forum fees.

By the Panel

Dated: December 13, 1990      /S/Frank Lewis  
Frank Lewis, Esq.  
Presiding Chair

Dated: December 13, 1990      /S/Robert Daniel Boone  
Robert Daniel Boone

Dated: December 13, 1990      /S/John Owen  
John Owen  
Industry Arbitrator