

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Olice Burdette Jr. and Carol
Williams, Executrix of the
Estate of Freddie Williams

CONSOLIDATED
CASES

90-01129
and
90-01131

Name of Respondents

FSC Securities Corporation,
Thomas Michael Murray and Don Carlos
Birdwell, Jr.

REPRESENTATION

For Claimants: Ellen B. Vergos, Esq. of Waring Cox, Memphis, Tennessee.

For Respondent, FSC Securities Corporation: Thomas J. Gallo, Esq. of Robins,
Kaplan, Miller & Ciresi, Atlanta, Georgia.

Respondent, Thomas Michael Murray did not file an appearance.

Respondent, Don Carlos Birdwell did not file an appearance.

CASE INFORMATION

Statement of Claims filed: April 20, 1990.

Claimant's Submission Agreements signed on: March 27, 1990 by Carol Williams
and on April 3, 1990 Olice Burdette, Jr.

Statement of Answer filed by Respondent, FSC Securities Corp. on: June 22,
1990.

Respondent, FSC Securities Corp.'s Submission Agreement signed on: June 21,
1990.

Respondent Thomas Michael Murray did not file either an Answer to the Claim
or a Submission Agreement.

Respondent Don Carlos Birdwell did not file either and Answer to the Claim
or a Submission Agreement.

HEARING INFORMATION

Hearing Dates/Sessions: June 4, 1991, for two sessions; June 5, 1991, for two sessions and November 13, 1991, for one session for a total of five (5) hearing sessions.

Hearing Location: Memphis, Tennessee.

CASE SUMMARY

Claimants, Olice Burdette, Jr. and Carol Williams, Executrix of the Estate of Freddie R. Williams (collectively, "Claimants") alleged Respondents FSC Securities Corp. ("FSC") Thomas Michael Murray ("Murray") and Don Carlos Birdwell ("Birdwell") violations of Section 17 (a) of the Securities Act of 1933 and Section 10(b) and 15 (c) (1) of the Securities Exchange Act of 1934, Rule 10b-5 promulgated thereunder, Article III of the NASD Rules of Fair Practice, common law fraud and breach of fiduciary duty. Additionally, Claimants alleged that FSC failed to supervise the acts of Murray and specifically approved the unsuitable investments of Claimants alleged in the complaints. Claimants alleged that Murray induced Claimants to purchase interests in three real estate limited partnerships known as Epic Associates 84-XXVI ("Epic"), Crestwood Partners, Ltd. ("Crestwood") and Southgate Apartments, Ltd. ("Southgate"). Claimants alleged that Murray represented that he was an expert in the area of tax shelters and that these tax shelters were suitable for the financial needs of the Claimants. Claimants alleged that in fact FSC and Murray failed to investigate whether these investments were suitable for the Claimants and as such breached a fiduciary duty owed to Claimants.

Respondent FSC replied to the claims and specifically denied the allegations contained in both claims. FSC asserted affirmative defenses, including , but not limited to, waiver, laches, estoppel, comparative negligence and the claims were barred by applicable statutes of limitation.

Neither Respondents Murray nor Birdwell submitted answers to the claims.

RELIEF REQUESTED

Claimants requested compensatory damages jointly and severally against FSC Murray and Birdwell in the amount of \$296,268.00, pre-judgment interest, commissions, punitive and exemplary damages, reasonable attorney's fees and costs of the proceeding.

Respondent, FSC requested that the claims be dismissed and the Claimants take nothing with costs of the arbitration matter assessed against the Claimants and for such other relief as the panel deems just and proper.

OTHER ISSUES CONSIDERED & DECIDED

At the first day of hearing, June 4, 1991, Claimant's agreed to drop their claims under sections 17(a) of the Securities Act of 1933 and 15(c)(1) of the Securities Exchange Act of 1934. The panel also considered FSC's motion to strike the second amended statement of claim and dismissed this pleading. Even though Birdwell and Murray failed to file answers to the Statement of Claims and submission agreements they are bound by the panel's determination on all issues submitted as they were required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration.

Following the first two days of hearing in June, 1991, Respondent FSC Securities Corp. filed a motion to dismiss the Claims of the Claimants with the NASD. The Claimants' Counsel filed a reply to the motion and the motion pleadings were forwarded to the panel for consideration prior to the continuation of the hearing on November 4, 1991. The panel did not rule on the motion to dismiss prior to reconvening with the parties in Memphis, Tennessee on November 4, 1991. Oral argument on the motion was entertained by the panel on November 4, 1991.

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.

AWARD

After considering the pleadings, the testimony of Claimant's witnesses except their expert witness as to any damages, the evidence presented at the hearing by Claimants, the written motion to dismiss filed by FSC, Claimant's reply to the motion and oral argument by counsel for the parties on November 4, 1991, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The panel of arbitrators unanimously agreed to grant the motion of the Respondent FSC to dismiss or for summary judgment on the basis of statute of limitations. In reaching this ruling, the panel considered the following dates. In late 1984, (October or November), the Claimants bought units in Southgate, Epic and Crestwood limited partnerships. The Respondent Murray returned to the Claimants the allegedly inaccurately completed subscription agreements in about that same time period. In September 1985, Epic filed bankruptcy and Claimants received notice of that filing shortly thereafter. In late 1985, Murray was terminated by FSC and the Claimants became aware of that termination in late 1985 or early 1986. In July, 1986, Vesteq, the general partner in the Southgate limited partnership, filed bankruptcy, and the Claimants became aware of that shortly thereafter. In December, 1986, Southgate filed bankruptcy and the Claimants became aware of this filing shortly thereafter. This arbitration matter was commenced in April, 1990. Accordingly, the panel holds that the claims asserted against Murray, Birdwell and FSC are barred by the statute of limitations as argued by FSC and dismisses all claims asserted by the Claimants with prejudice, and;

2. The parties shall each bear their respective costs, expenses and attorney's fees incurred in this matter.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed. The NASD shall retain the \$200.00 non-refundable claim filing fee previously deposited with the NASD by Claimant Burdette and the \$200.00 non-refundable claim filing fee previously deposited with the NASD by Claimant Williams. The NASD shall also retain the \$1100.00 hearing session deposit previously deposited by the Claimants with the NASD. Respondent FSC is assessed and shall pay to the NASD additional Forum Fees in the sum of \$1875.00. Claimants are assessed and shall pay to the NASD additional Forum Fees in the sum of \$775.00.

Forum Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures
Name

William J. Landers, Esq.
Chairman, Public Arbitrator

Dated

David E. Scott
David E. Scott
Public Arbitrator

12-11-91
Dated

Carey Allen
Industry Arbitrator

Dated

Date served by the NASD: _____

2. The parties shall each bear their respective costs, expenses and attorney's fees incurred in this matter.

FORM FEE

Pursuant to Section 41c of the Code of Arbitration Procedure, the following Forum Fees are assessed. The NASD shall retain the \$200.00 non-refundable claim filing fee previously deposited with the NASD by Claimant Nordette and the \$200.00 non-refundable claim filing fee previously deposited with the NASD by Claimant Williams. The NASD shall also retain the \$1100.00 hearing session deposit previously deposited by the Claimants with the NASD. Respondent FRC is assessed and shall pay to the NASD additional Forum Fees in the sum of \$1875.00. Claimants are assessed and shall pay to the NASD additional Forum Fees in the sum of \$775.00.

Forum Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures

Name

William J. Rogers

William J. Rogers, Esq.
Chairman, Public Arbitrator

1/21/92
Date

David M. Scott
Public Arbitrator

Date

Gregory Allen
Industry Arbitrator

Date

Date served by the NASD:

90-1129 41131

2. The parties shall each bear their respective costs, expenses and attorney's fees incurred in this matter.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed. The NASD shall retain the \$200.00 non-refundable claim filing fee previously deposited with the NASD by Claimant Burdette and the \$200.00 non-refundable claim filing fee previously deposited with the NASD by Claimant Williams. The NASD shall also retain the \$1100.00 hearing session deposit previously deposited by the Claimants with the NASD. Respondent FSC is assessed and shall pay to the NASD additional Forum Fees in the sum of \$1875.00. Claimants are assessed and shall pay to the NASD additional Forum Fees in the sum of \$775.00.

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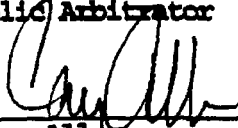
Concurring Arbitrators' Signatures
Name

William J. Landers, Esq.
Chairman, Public Arbitrator

Dated

David E. Scott
Public Arbitrator

Dated



Carey Allen
Industry Arbitrator

12-9-91
Dated

Date served by the NASD: _____