

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Katy Richards

Claimant

vs.

AWARD

NASD #90-01197

American Pacific Securities  
Judith Niles

Respondents

REPRESENTATION

Claimant was represented by M. Van Smith, Esq., sole practitioner. Respondent American Pacific Securities was represented by Ralph Singman, Esq. of Steinberg, Miller & Goldstein. Respondent Judith Niles was represented by Shannon L. McDougald, Esq. of Kessal, Young & Logan.

SUMMARY OF ISSUES

This case was filed with the National Association of Securities Dealers, Inc. ("NASD") on April 27, 1990. Claimant alleged that the recommended investments in mutual funds and limited partnerships were unsuitable to Claimant's investment objective of monthly income.

Respondents American Pacific Securities and Judith Niles separately denied the allegations and maintained that a variety of investment vehicles that met Claimant's investment objectives were discussed with Claimant who then chose those specific investments now complained of. Respondents separately asserted affirmative defenses including that the claims alleged are barred by the applicable statutes of limitations and are ineligible for submission under Section 15 of the Code of Arbitration Procedure.

DAMAGES AND RELIEF REQUESTED

In the Statement of Claim, Claimant requested that she recover unspecified damages according to proof.

Respondents separately requested dismissal of the claim and costs.

### PROCEDURAL ISSUES

On April 8, 1991 a pre-hearing conference was held in accordance with Section 32 of the Code of Arbitration Procedure before the Presiding Arbitrators empaneled in San Francisco, California. The pre-hearing conference was held via telephone conference call and lasted one (1) session. The Panel granted Respondents' motion to change the hearing situs from San Francisco to Los Angeles, California and granted Respondent American Pacific Securities' request to file an Answer. The Arbitrators recused themselves to allow a new Panel of Arbitrators to be appointed from the Los Angeles area.

### DAMAGES AND RELIEF AWARDED

On June 11, 1991 the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on March 28, 1990 and by Respondent American Pacific Securities on April 26, 1991. Respondent Judith Niles did not sign a submission agreement but is subject to the jurisdiction of this arbitration pursuant to Sections 1 and 12 of the Code of Arbitration Procedure. In addition, Respondent Niles filed an Answer and appeared, with counsel, at the arbitration hearing.

The hearing was conducted in Los Angeles, California and lasted three (3) 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 as follows:

1. All claims are denied. The Panel found that Respondent Niles did not make unsuitable recommendations to Claimant and the Arbitrators therefore did not make any findings on the affirmative defenses raised by Respondents.

2. The parties shall each bear their respective costs including attorneys' fees.

3. In accordance with Section 43 of the NASD Code of Arbitration Procedure:

- a. the NASD shall retain the \$500 filing fee previously deposited by the Claimant;

- b. the NASD shall retain the \$250 postponement fee deposited by Respondent American Pacific Securities pursuant to the Order of the Arbitrators issued April 9, 1991 and Respondent Judith Niles is again assessed the sum of \$250 representing the postponement fee pursuant to the earlier Order; and

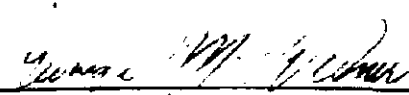
c. Respondents are jointly and severally assessed the sum of \$500 representing forum fees to be paid to the NASD directly.

OTHER ISSUES

The parties stipulated to the execution and service of the award in counterpart copies.

ARBITRATORS CONCURRING

DATE SERVED: 07/01/91

  
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George M. Wiener

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