

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

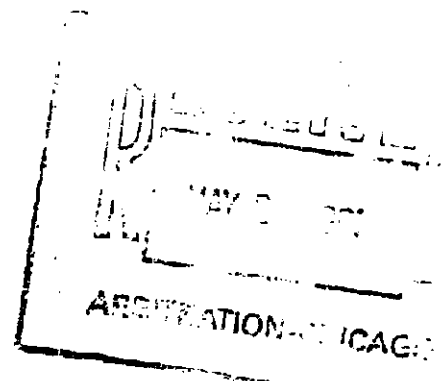
Name of Claimant(s)

Robert W. and Barbara A. Yarger

90-01959

Name of Respondent(s)

IDS Financial Services, Inc.  
Mitchell Keil  
Janet Mabry



CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about July 16, 1990, Claimants Robert W. and Barbara A. Yarger ("Claimants") alleged that Respondents IDS Financial Services, Inc. ("IDS") Mitchell Keil ("Keil") and Janet Mabry ("Mabry") violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10(b)-5 promulgated thereunder, Section 12 of the Securities Act of 1933, Article 13 of the Arizona Securities Law, A.R.S. Section 44-1991, A.R.S. 13-2301 et seq., A.R.S. Section 44-1521 et seq. and engaged in securities fraud under California law. Additional causes of action alleged by Claimants included negligence, breach of fiduciary duty and breach of contract. Claimants alleged that they met with Keil in November and December, 1986, that Keil was aware Claimants had few assets other than their home and the proceeds of Mr. Yarger's stock investment plan and that Keil was told that Claimant's investment goals were conservative with safety of principal and current income their goal. Claimants alleged that they invested the proceeds of Mr. Yarger's stock investment plan on Keil's recommendation in Shurgard Income Properties XII, IDS Extra Income Fund, Inc. and IDS Bond Fund, Inc. Claimants alleged that these investments were unsuitable and not within their goals and objectives. Additionally Claimants alleged that IDS violated its fiduciary duty and obligation to Claimants by failing to adequately supervise the activities of Keil and Mabry.

In a joint Statement of Answer filed with the NASD on or about November 1, 1990, IDS, Keil and Mabry alleged that numerous investment options were discussed with Claimants, that Keil reviewed the prospectus of the funds in detail with Claimants and that Keil discussed the concept of risk tolerance at length with Claimants. IDS, Keil and Mabry alleged that Claimants were given full and fair disclosure of all relevant aspects of their investments and that Claimants upon review of the prospectuses decided upon the degree of risk they were willing to assume. IDS denied that there was any failure to supervise Mabry or Keil and alleged that the investments made by Claimants were suitable. Additionally, IDS, Keil and Mabry asserted certain

affirmative defenses including ratification, estoppel, failure to mitigate damages and that the claims were time barred by applicable statutes of limitation.

#### RELIEF REQUESTED

Claimants requested their losses of \$95,116.12 plus interest at 10% per annum under Arizona law, costs, treble damages and attorney's fees.

IDS, Mabry and Keil requested dismissal of Claimant's claims.

#### PROCEDURAL MATTERS

On Tuesday and Wednesday April 23 and 24, 1991 in Scottsdale, Arizona during a hearing lasting a total of five (5) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on July 12, 1990 by Claimants Robert W. and Barbara A. Yarger, on October 30, 1990 by Colleen Harvey on behalf of Respondent IDS Financial Services, Inc., on December 1, 1990 by Respondent Mitchell Keil and on October 25, 1990 by Respondent Janet Mabry.

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 and the parties' pre-hearing legal memoranda, has decided in full and final resolution of the issues submitted for determination as follows:

1. IDS is liable for and shall pay to Claimants jointly, the sum of Eleven Thousand Seven Hundred Sixty Nine Dollars and Thirty Four Cents (\$11,769.34);
2. No interest is awarded on this sum;
3. All claims asserted by Claimants against Respondents Mabry and Keil shall be and are hereby dismissed in their entirety;
4. The claim for treble damages is specifically denied and dismissed;
5. The parties shall each bear their respective costs, expenses, and attorney's fees incurred in this matter; and,

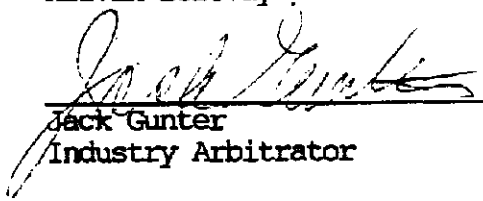
5. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall refund the hearing session deposit in the amount of \$750.00 previously deposited with the NASD by the Claimants. IDS is assessed and shall pay to the NASD forum fees in the amount of \$3750.00. The NASD will also retain the \$200.00 non-refundable filing fee deposited by Claimants.

Dated:

\_\_\_\_\_  
Mark Chester  
Presiding Chair

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Melvin Borovay

5/2/91

  
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Jack Gunter  
Industry Arbitrator

6. 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 \$750.00 previously deposited with the NASD by the Claimants. IDS is assessed and shall pay to the NASD forum fees in the amount of \$3750.00. The NASD will also retain the \$200.00 non-refundable filing fee deposited by Claimants.

Dated:

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May 4 1991

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Mark Chester  
Presiding Chair

  
Melvin Borovay

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Jack Gunter  
Industry Arbitrator

- Jack Gunter**  
**Industry Arbitrator**