

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Marie E. Sexauer

Claimant(s)

and

90-02050

IDS Financial Services Inc.

Blair Witt

Ron Eichoff

Priscilla Woodley

Respondent(s)

REPRESENTATION OF PARTIES

Claimant Marie E. Sexauer appeared pro se and was assisted by her son, Richard J. Hoppert and her daughter, Jean K. Tipton.

Respondents IDS Financial Services, Inc., Blair Witt, Ron Eichoff and Priscilla Woodley were represented by Gary R. Irwin, Esq. of IDS Financial Services, Inc., Minneapolis, Minnesota.

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on July 24, 1990, Claimant Marie E. Sexauer ("Sexauer") alleged that Respondent Ron Eichoff ("Eichoff"), while employed by or acting as an agent for Respondent IDS Financial Services, Inc. ("IDS") induced her into purchasing an investment in the IDS Extra Income Fund by misrepresenting the risks of the Fund. In addition, Sexauer claimed that her investment in this alleged "junk bond" fund was unsuitable in view of her known investment objectives and financial background. Sexauer further alleged that Eichoff, Respondent Blair Witt ("Witt") and Respondent Priscilla Woodley ("Woodley") failed to properly inform her of the losses in the account and failed to adequately monitor the account to prevent further loss.

In a Statement of Answer filed with NASD on October 24, 1990, Respondents IDS Financial Services, Inc., Blair Witt, Ron Eichoff and Priscilla Woodley denied the material allegations of the Statement of Claim, alleging that:

- 1) Sexauer received the prospectus and completed an application and explanation of investment acknowledging she sought a high level of current income;
- 2) Sexauer received quarterly statements detailing the account activity, a new prospectus each year and 1099's which revealed the principal balance of the fund;
- 3) IDS did not have discretionary authority, does not hold itself

out as giving market timing advice, and Sexauer failed to exercise her option to transfer to another fund in the IDS family; and

4) IDS is not an insurer of the investment.

Respondents further alleged as affirmative defenses that the Statement of Claim is barred by the relevant statute of limitations, laches, estoppel, ratification and by the Claimant's failure to mitigate damages.

RELIEF REQUESTED

Claimant Marie E. Sexauer requested entry of an award against Respondents IDS Financial Services, Inc., Blair Witt, Ron Eichoff and Priscilla Woodley in the amount of \$16,556.82 for loss of principal, \$3,526.10 for out of pocket costs, interest in the amount of \$827.84 as computed from January 12, 1990 to July 10, 1990 and punitive damages in the amount of \$33,113.64.

Respondents IDS Financial Services, Inc., Blair Witt, Ron Eichoff and Priscilla Woodley requested that the Statement of Claim be dismissed and denied in its entirety.

PROCEDURAL MATTERS

On July 16, 1991 in Minneapolis, Minnesota during a hearing lasting a total of two (2) sessions the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on July 9, 1990 by Claimant Marie E. Sexauer, on October 19, 1990 by Colleen Harvey on behalf of Respondent IDS Financial Services, Inc., and on October 18, 1990 by Respondents Blair Witt, Ronald Eichoff and Priscilla Woodley.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award 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. Respondent IDS Financial Services, Inc. is liable for and shall pay to Claimant Marie E. Sexauer the sum of \$5,000.00;
2. The claims against Respondents Blair Witt, Ronald Eichoff and Priscilla Woodley are hereby dismissed and denied in their entirety;
3. Parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein;
4. Pursuant to Section 43c of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the claim filing fee of \$150.00 and that hearing session deposit in

the amount of \$500.00 previously deposited with the NASD by the Claimant Marie E. Sexauer. Respondent IDS Financial Services, Inc. is liable for and shall pay to the NASD additional forum fees in the amount of \$500.00.

Dated:

7-16-91

Casandra Mihalchick, Esq.
Casandra Mihalchick, Esq.
Presiding Chair
Public Arbitrator

7-16-91

Douglas J. Nesbit
Douglas J. Nesbit
Public Arbitrator

7-16-91

Dean E. Hutton
Dean E. Hutton
Industry Arbitrator