

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Richard G. Thompson, M.D.

90-02265

Name of Respondent

Boettcher & Company

REPRESENTATION

Claimant, Richard G. Thompson, M.D. appeared pro se.

Respondent, Boettcher & Company was represented by William D. Nelson, Esq. of Robinson, Waters, O'Dorisio and Rapson of Denver, Colorado.

CASE INFORMATION

Statement of Claim filed: August 16, 1990.

Claimant's Submission Agreement signed on: July 31, 1990.

Statement of Answer filed by Respondent, Boettcher & Company on: November 2, 1990.

Respondent, Boettcher & Company's Submission Agreement signed on: November 1, 1990 by William D. Nelson.

HEARING INFORMATION

Hearing Date/Sessions: December 18, 1991 for Two (2) sessions.

Hearing Location: Denver, Colorado. The Claimant, Richard G. Thompson, M.D. appeared via telephone from Boise, Idaho and one of Respondent Boettcher & Company's witnesses testified by telephone from Singapore.

CASE SUMMARY

Claimant, Richard G. Thompson, M.D. ("Thompson") alleged that his stockbroker, Shannon Lowe, who was employed by Respondent, Boettcher & Company ("Boettcher") failed to provide Thompson with a prospectus and failed to make other disclosures which Thompson felt should have been made by a responsible securities salesperson in connection with Thompson's purchase of 25 units of Boettcher Western Properties Fund 1981-82, ("BWP" or "the partnership"), a real estate limited partnership purchased through Boettcher

in 1981. Thompson alleged that BWP was purchased for a qualified tax-exempt retirement plan and was therefore an inappropriate investment for this type of retirement plan. Thompson alleged that the broker failed to point out that the partnership was inappropriate for his retirement plan when the investment was discussed on the telephone. Thompson alleged that had certain information regarding the nature of the partnership been discussed with him or that he had been provided a prospectus prior to investing in the partnership, he would not have invested in the partnership.

Respondent Boettcher alleged that Thompson executed a subscription agreement which made several representations to Boettcher including that Thompson received the June 2, 1981 prospectus. Boettcher asserted that Thompson had to have received the prospectus because the subscription agreement was part of the prospectus. Boettcher alleged that since Thompson received the BWP prospectus and the prospectus disclosed all salient features of BWP, including the risks, the partnership was suitable for Thompson's profit sharing account. Boettcher also alleged that Thompson received all relevant communications from the partnership and that the partnership's failure to perform as anticipated resulted from economic circumstances beyond the control of Boettcher or its agents. Boettcher also asserted that Thompson's claims were time barred by Section 15 of the NASD Code of Arbitration Procedure ("the Code").

RELIEF REQUESTED

Thompson requested return of his \$25,000 principal, plus interest from the date of investment until the principal is paid.

Boettcher requested dismissal of Thompson's claim in its entirety, costs of defending the claim and an award of attorney's fees.

OTHER ISSUES CONSIDERED & DECIDED

The arbitrator heard argument on Boettcher's motion to dismiss at the hearing and denied the motion. The arbitrator also denied Thompson's motion for postponement, but allowed Thompson to appear and testify at the hearing telephonically.

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 remains on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Thompson's claim asserted against Boettcher shall be and is hereby denied and dismissed in its entirety; and,
2. The parties shall each bear their own costs and expenses incurred in this matter including any attorney's fees. Accordingly, Boettcher's claim for

attorney's fees is denied.

OTHER COSTS

Thompson is assessed and shall pay to the NASD the sum of \$189.53 as his share of the telephone conference call and Boettcher is assessed and shall pay to the NASD the sum of \$75.00 as the cost of its witness appearing by telephone from Singapore.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

The NASD shall retain the hearing session deposit of \$300.00 and the non-refundable claim filing fee of \$100.00 previously deposited with the NASD by Thompson. Thompson is assessed and shall pay to the NASD additional forum fees of \$300.00 for the second hearing session.

Forum Fees were calculated as follows: 2 sessions X \$300 = \$600 minus Thompson's hearing session deposit of \$300 = net \$300 due to the NASD.

Forum Fees assessed against: Claimant Richard G. Thompson, M.D.

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

Concurring Arbitrator's Signature

Name

Thaddeus J. Tecza, Ph.D
Public Arbitrator/Chairman

Dated

Date of Decision: December 18, 1991

Date Award Served by the NASD: _____