

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Richard and Nancy Maahs

Claimant

and

90-02371

Dennis Bertz and Larry Peters

Respondents

REPRESENTATION OF PARTIES

Claimants Richard and Nancy Maahs appeared pro se.

Respondent Dennis Bertz was represented by Terry F. Peppard, Esq. of Wendel and Center, Madison, Wisconsin. Respondent Larry Peters appeared pro se.

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about August 28, 1990, Claimants Richard and Nancy Maahs ("Maahs") alleged that on July 30, 1988, they bought a half share of Santa Cruz Associates Limited Partnership for a total investment of \$5100.00 from Respondent Dennis Bertz ("Bertz"), broker for the firm of Coordinated Capital Securities. Respondent Larry Peters ("Peters") is President of Coordinated Capital Securities and Chief Compliance officer. Maahs further alleged that they were misrepresented by their broker, Respondent Bertz in that after reading the prospectus for the partnership, and after assurance by Bertz that he, too, would buy into the partnership, Bertz never bought into the partnership. The Maahs' alleged that they felt that Bertz's assurance that he would also buy, was an oral stipulation to their purchase in the partnership. The Maahs' alleged that in April of 1988, they received a letter from Santa Cruz regarding possible bankruptcy of the partnership. In summary, the Maahs' alleged that they felt the sale was made by Respondent Bertz with an oral stipulation which was not kept.

In a Statement of Answer filed with the NASD on or about December 14, 1990 by Respondent Dennis Bertz ("Bertz"), Bertz alleged that he met with the Maahses to review the offering literature and answer their questions about the partnership before the Maahses invested. Bertz further alleged that in a related conversation with Mrs. Maahs, he indicated that he was seriously considering investing in the same partnership himself, although ultimately he did not do so.

In a Statement of Answer filed with the NASD on or about December 13, 1990 by Respondent Larry Peters ("Peters"), Peters alleged that Coordinated Capital Securities ("Capital") took no action on the Mashses complaint to them because Capital's investigation showed that the Mashses were suitable for the investment, had read and understood the offering materials, and that Bertz responded to Capital that he had considered purchasing a unit but had no understanding with the Mashses regarding such a purchase. Peter's further alleged that the Mashses have failed to show that the alleged statements of Mr. Bertz caused their loss, and, Peters further alleged that they have no evidence Mr. Bertz made any statements which changed the meaning of the risks of the investment.

RELIEF REQUESTED

Claimants Richard and Nancy Mashs requested actual damages in the amount of \$5100.

Respondent Larry Peters requested that he be dismissed as an individual from the proceeding.

OTHER ISSUES

Claimants amended their request for actual damages to the amount of \$4461. Post-hearing briefs regarding the Statute of Limitations were submitted by the parties.

PROCEDURAL HISTORY

On August 1, 1991 in Milwaukee, Wisconsin during a hearing lasting a total of two sessions, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed on or about August 20, 1990 by Claimant Richard and Nancy Mashs, on or about November 29, 1990 by Respondent Dennis Bertz, and on or about November 29, 1990 by Respondent Larry Peters.

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

The undersigned arbitrator, having considered the pleadings, the testimony, and the evidence presented at the hearing and the closing briefs of the Respondent Dennis M. Bertz and the Claimants Richard and Nancy Mashs, has decided in full and final resolution of the issues submitted for determination as follows:

1. The claim shall be and hereby is dismissed as to both Respondents Dennis Bertz and Larry Peters for the reason the applicable three (3) year statute of limitations has expired. Lampf, Pleva, Lipkind, Prupis & Petigrow

v. Gilbertson, U.S. , CCH Fed. Sec. Law Rpt. Section 96,034 (6/20/91); Cahill v. Ernst & Ernst, 625 F.2d 151 (7th Cir. 1980); Kramer v. Loew & Co., 357 F. Supp. 83 (SD Wis. 1973).

2. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the non-refundable filing fee in the amount of \$75 and shall retain the hearing session deposit in the amount of \$200 previously deposited with the NASD by the Claimant. Respondents, jointly and severally, shall reimburse to the claimants \$275 for the fees previously deposited with the NASD by the Claimants. Respondents, jointly and severally, shall pay to the NASD an additional amount of \$200 for forum fees.

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

Dated:

Dec 11 1991

Charles E. Burroughs
Charles E. Burroughs
Public Arbitrator