

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)

Name of Claimant(s))

John E. and Helen S. Croken)

Case No. 90-02761

Name of Respondent(s))

Dean Witter Reynolds, Inc.)

Stephen T. Slattery)

Heard before the members of the Arbitration Panel:

Myron Dunay, Esq.

Public

Thomas E. Swenson

Public

Robert H. Hagan

Industry

REPRESENTATION

Claimants, John E. and Helen S. Croken ("Crokens"), were represented by Richard E. Warren, Esq. of Fleming, Haile & Shaw, P.A. Respondents, Dean Witter Reynolds, Inc. ("DWR") and Stephen T. Slattery ("Slattery"), were represented by Melinda Socol Herbet, Esq. of Dean Witter Reynolds, Inc.

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on October 4, 1990. Claimants, alleged that they are elderly, retired persons who are not sophisticated or knowledgeable investors, and who live on fixed incomes; that they realized a net of \$100,000.00 on the sale of their New Jersey home; that they invested that \$100,000.00 with Respondents; that Respondents were advised of Claimants' investment objectives of income with safety of principal; that Respondents, through Slattery, solicited Claimants to invest their entire life savings in a junk bond fund; that Respondents made misrepresentations of and omitted to state material facts; and, that the investment was unsuitable. Claimants alleged that Respondents' actions constituted breach of fiduciary duty; negligence and gross negligence; negligent supervision and violation of Section 517.301, Florida Statutes, and Section 10(b) of the 1934 Exchange Act.

In a Statement of Answer filed with the NASD on November 26, 1990, Respondents denied all allegations of wrongdoing and alleged that Claimants' primary investment objective was high, current, monthly income; that Claimants had significant net worth and assets; and, had prior investment experience. Respondents alleged that the risks were fully disclosed; that Claimants received a prospectus; authorized, approved and ratified the investment; and, received income of almost \$24,000.00.

Respondents alleged the affirmative defenses of failure to state a claim; investments were suitable; Claimants failed to exercise due diligence and were negligent in supervising their own affairs; superceding and intervening causes; failure to mitigate damages; and, adequate supervision.

RELIEF REQUESTED

Claimants requested damages in the amount of \$49,940.70, punitive damages, costs, interest and attorney's fees.

Respondents requested dismissal and costs.

AWARD

On April 8 (pre-hearing conference) and May 16 and 17, 1991, in Stuart, Florida, during a hearing lasting five (5) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on October 3, 1990, by Respondent, Slattery, on November 16, 1990, and on November 21, 1990 by Lorena J. Kern, on behalf of Respondent, DWR.

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

1. 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 originals remain on file with the NASD.
2. Respondents are found liable, jointly and severally, and shall pay to the Claimants the amount of \$38,250.00, inclusive of interest at the legal rate of 12% per annum.
3. Respondents are also found liable, jointly and severally, and shall pay to the Claimants the further amount of \$12,750.00 for attorney's fees pursuant to Section 517.211, Florida Statutes.
4. Respondents are also found liable, jointly and severally, and shall pay to the Claimants the further amount of \$1,500.00 for expert witness fees.
5. Claimants' request for punitive damages is denied.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$2,300.00 (one pre-hearing conference x \$300.00 plus four sessions x \$500.00). Claimants are hereby assessed \$667.00 for which the NASD shall retain the \$500.00 session deposit in partial satisfaction thereof. Respondents are hereby assessed \$1,633.00, jointly and severally, payable to the National Association of Securities Dealers, Inc.

2. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including attorney's fees.

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

OTHER ISSUES

None.

Concurring Arbitrators' Signatures

/s/
Myron Dunay, Esq.

/s/
Thomas E. Swenson

/s/
Robert H. Hagen

Date of Decision: May 31, 1991