

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Leila Levinson

and

90-02827

Name of Respondents

Choice Investment Products, Inc.,  
Forde D. McWilliams and  
Michael G. Acuff

**REPRESENTATION OF PARTIES**

Claimant Leila Levinson was represented by Patrick Lanier, Esq., Austin, Texas.

Respondent Choice Investment Products, Inc. was represented by James S. Kaigin.

Respondent Forde D. McWilliams appeared *pro se*.

Respondent Michael G. Acuff did not appear at the hearing.

**CASE INFORMATION**

The Statement of Claim was filed on or about October 11, 1990. Submission Agreement of Claimant Leila Levinson was signed on September 24, 1990.

Statement of Answer of Respondents Choice Investment Products, Inc. ("Choice"), Forde D. McWilliams ("McWilliams") and Michael G. Acuff ("Acuff")(collectively as "Respondents") was filed on or about February 14, 1991. Submission Agreement of Respondent Choice Investment Products, Inc. was signed on February 14, 1991 by James S. Kaigin. Submission Agreement of Respondent Forde D. McWilliams was signed on April 15, 1991. Submission Agreement of Respondent Michael G. Acuff was signed on April 10, 1991.

**HEARING INFORMATION**

The hearing was held on Tuesday, March 30, 1993 for two (2) session and Wednesday, march 31, 1993 for two (2) sessions in Dallas, Texas for a total of four (4) sessions.

### **CASE SUMMARY**

Claimant alleged that Respondents committed deceptive trade practices, breached their fiduciary duty, breached their contract with the Claimant, engaged in securities fraud pursuant to the Federal and Texas securities statutes, engaged in common law fraud, and that Respondent Choice negligently supervised its agent McWilliams. Claimant specifically alleged that Respondents used deceptive representations in connection with investment type services; represented that the account agreement conferred rights, remedies or obligations which it does not have or which are prohibited by law; and failed to disclose information concerning investment services for the purpose of inducing the Claimant to enter into a transaction to purchase units of Ratex Energy Completion Program Joint Venture Beard #1-R well, which she would not have entered into if such information had been disclosed. Claimant further alleged that she was an unsophisticated investor unknowledgeable in all types of securities as well as the risks involved in option trading and a margin account. Finally, Claimant alleged that Choice failed to supervise its agents.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically denied that deceptive representations were used in connection with Choice Investment financial services; failed to disclose information about its investment services in order to induce Claimant into transactions; that they engaged in or committed any unconscionable acts or courses of action; and that any deceptive trade practice was committed knowingly.

### **RELIEF REQUESTED**

Claimant requested an award of actual damages in an amount of not less than \$75,000.00, with interest from the date of loss at the rate of 10% per annum or not less than 6% per annum, attorney's fees, costs, expert witness fees, punitive and/or exemplary damages of not less than three times the actual damages, and for such further relief to which the panel may determine the Claimant is justly entitled.

Respondents requested that the Claimant recover nothing and that they be awarded all costs together with such other and further relief to which they may be entitled.

### **OTHER ISSUES CONSIDERED & DECIDED**

Upon review of the file, the panel has determined that Respondent Michael G. Acuff has been properly served with the Statement of Claim pursuant to Sections 13 and 25 of the NASD Code of Arbitration Procedure (the "Code"). The panel also determined that Respondent Michael G. Acuff had received due notice of the hearing as required under Section 26 of the Code and that arbitration of the matter would proceed pursuant to Section 29 of the Code.

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**

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

1. Choice Investment Products, Inc., Forde D. McWilliams and Michael G. Acuff shall be and hereby are jointly and severally liable for and shall pay to the Claimant Leila Levinson the sum of \$29,000.00 except Respondent Michael G. Acuff who shall be jointly and severally liable for \$15,000.00 of the above stated \$29,000.00.
2. Interest at the rate of 5% per annum is awarded on the above stated sums beginning May 1, 1989.
3. Choice Investment Products, Inc., Forde D. McWilliams and Michael G. Acuff shall be and hereby are jointly and severally liable for and shall pay to the Claimant Leila Levinson punitive damages in the amount of \$11,000.00 except Respondent Michael G. Acuff who shall be jointly and severally liable for \$5,000.00 of the above stated \$11,000.00. The undersigned arbitrators find authority for this award of punitive damages under common law, the Texas Deceptive Trade Practices Act, and the Texas Securities Law.
4. Choice Investment Products, Inc., Forde D. McWilliams and Michael G. Acuff shall be and hereby are jointly and severally liable for and shall pay to the Claimant Leila Levinson attorney's fees in the amount of \$11,848.74. The undersigned arbitrators find authority for this award of attorney's fees under the Texas Deceptive Trade Practices Act, and the Texas Securities Law.

### **FORUM FEES**

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$200.00 and shall refund the hearing session deposit in the amount of \$750.00 previously deposited with the NASD by the Claimant. Respondents Choice Investment Products, Inc., Forde D. McWilliams and Michael G. Acuff are jointly and severally liable for and shall pay to the N.A.S.D. the sum of \$3,000.00 as forum fees.

Forum fees are calculated at the rate of \$750.00 per hearing session and \$300.00 for each prehearing conference, if any.

The NASD shall retain postponement fees in the amount of \$750.00 previously deposited with the NASD by the Claimant. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

s/ Gregory L. Ceshker, Esq.  
Gregory L. Ceshker, Esq.  
Public Arbitrator, Presiding Chair

May 3, 1993

s/ Harold L. Sutherland  
Harold L. Sutherland  
Public Arbitrator

May 3, 1993

s/ Virgil F. Liptak, CFP  
Virgil F. Liptak, CFP  
Industry Arbitrator

April 30, 1993