

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, N.Y. 10004
FAX (212) 858-4389

Name of Claimant(s)

Kay Jean McNally

90-02895

Name of Respondent(s)

North American Investment Corp.
Barbara L. Moran
Newbridge Securities, Inc.
Gene Morgan
Gene Morgan Financial
Anchor National Financial Services, Inc.

REPRESENTATION

For Claimant: Dana A. Donohue, Esq. of Hertz, Schram & Saretsky, P.C.

For Respondent: Barbara L. Moran: Barbara L. Moran, Pro Se.

CASE INFORMATION

Statement of Claimed filed: October 6, 1990.

Claimant's Submission Agreement signed on: October 15, 1990.

Statement of Answer filed by Respondent, Barbara L. Moran, on: July 31, 1991.

Respondent, Barbara L. Moran, did not submit an executed Submission Agreement.

HEARING INFORMATION

Hearing Date/Sessions: August 4, 1992 - Two sessions

Hearing Location: AAA - Southfield, Michigan.

CASE SUMMARY

Claimant alleged that Respondent, Barbara L. Moran ("Moran"), assumed responsibility for her account. Claimant alleged that she told Moran that her principal investment objectives were safety of principal and long-term capital gain. Claimant alleged that Moran invested in unsuitable investments without her authority and without disclosing the risks.

Respondent, Moran, maintained that she had no intention of soliciting Claimant's business. Moran maintained that she did not promise the Claimant that she would make more money investing the proceeds through her. Moran maintained that Claimant approved each purchase made by Moran. Moran maintained that Claimant had total discretionary control over her account. Moran maintained that the proper prospectuses were sent to the Claimant.

RELIEF REQUESTED

Claimant requested the amount of \$20,587.71, costs and attorneys fees. This amount was increased by the Claimant to \$50,919.65 at the hearing.

II FINDING OF FACT

1. From 1980 through 1987, Claimant, Jean McNally ("McNally") invested her limited funds conservatively. Sometime in late 1987, Moran, a long time friend of McNally's who had moved to Clearwater, Florida visited McNally at her home in Rochester, Michigan.

2. Moran, then a registered representative with North American Investment Corp. ("NAIC"), discussed McNally's investments. McNally explained that her funds were invested in sound stocks. McNally advised Moran that, due to her financial situation and physical condition, her investment objectives and needs were safety of principal and income.

3. Moran promised McNally that she could make her more money and increase her income if McNally would invest the proceeds through Moran and NAIC.

4. Further, Moran represented to McNally that the investments she would make with the proceeds would be consistent with McNally's investment objectives and needs, safety of principal and income. McNally's investment goals and risks limitations are evidenced by her NAIC New Account Form which was admitted into evidence at arbitration.

5. Having known McNally for many years, Moran was fully aware at the time of this discussion that McNally (1) is a victim of multiple sclerosis, degenerative disease, (2) is unable to work, and (3) is dependant upon her investments for income and living expenses.

6. In reliance upon Moran, who was acting within the scope of her employment and agency, McNally liquidated her stocks, opened an account with Moran to reinvest proceeds from the sale of her stocks.

7. In the face of her knowledge of McNally's financial needs and deteriorating physical condition, Moran invested McNally's funds in a variety of UNSUITABLE investments without obtaining McNally's authority or disclosing the risks associated with the investments to McNally.

8. McNally allowed Moran to reinvest the proceeds stemming from the sale of her stocks in reliance upon the misrepresentations, omissions and lulling conduct of Moran, while acting within the scope of her employment and/or agency.

9. Moran engaged in self-dealing transactions and exercised improper influence to benefit herself and NAIC at McNally's expense.

10. As a result of Moran's wrongdoing, the value of McNally's investments has declined precipitously, ultimately culminating in McNally suffering substantial losses.

11. Moran did not appear at the Hearing and thus testimony was taken from the Claimant and her expert witness. The arbitrator was impressed with the testimony of these two witnesses and found that the investments made on behalf of the Claimant by Moran are UNCONSCIONABLE.

OTHER ISSUES CONSIDERED & DECIDED

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.

By letter dated July 22, 1992, Claimant withdrew her claims against Gene Morgan and Gene Morgan Financial.

By letter dated July 22, 1992, Claimant withdrew her claims against Anchor National Financial Services, Inc.

By letter dated July 22, 1992, Claimant withdrew her claims against Newbridge Securities, Inc.

Due to a bankruptcy filing in the U.S. Bankruptcy Court, District of Connecticut on July 23, 1992 the action against North American Investment Corp. was stayed.

Respondent, Barbara L. Moran did not appear at the hearing. Ms Moran made an application to the Chairman to appear by telephone. The application was denied.

III. CONCLUSIONS OF LAW

A. COUNT I--FRAUDULENT MISREPRESENTATIONS AND OMISSIONS IN VIOLATION OF RULE 10B-5

1. Moran's false representations and omissions were made in connection with the purchase and sale of securities, and constituted a violation of section 10(b) of the 1934 Act, 15 U.S.C. section 78j and o(c), and Rule 10b-5.

AWARD

On May 22, 1991 and May 23, 1991 the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant Florence S. Reynolds on October 11, 1990 and by Respondent Shearson Lehman Hutton, Inc. on January 23, 1991. The hearing was conducted at the National Association of Securities Dealers, Inc. offices located in Washington, D.C. and consisted of four (4) hearing sessions. The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined in full and final resolution of the issues submitted for determination as follows:

1. The claim is time barred under all applicable Statutes of Limitations.
2. The parties shall each bear their respective costs, including attorneys' fees.

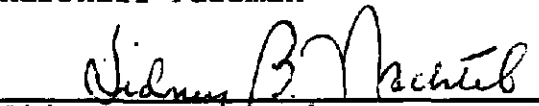
FORUM FEES

Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the Nine Hundred Fifty Dollars and No Cents (\$950.00) filing fee previously deposited by the Claimant and the Respondent Shearson Lehman Hutton, Inc. be and hereby is liable and shall pay to the Claimant the sum of Nine Hundred Fifty Dollars and No Cents (\$950.00) to reimburse the Claimant for the filing fee paid. In addition the Respondent Shearson Lehman Hutton, Inc. be and hereby is liable and shall pay to the National Association of Securities Dealers, Inc. the sum of Two Thousand Two Hundred Fifty Dollars and No Cents (\$2,250.00) to represent forum fees.

ARBITRATOR SIGNATURES


Robert McLaughlin, Esq.


Marshall Passman


Sidney B. Wachtel

Executed:
~~Date of Decision:~~ July 17, 1991
Date of Decision: August 30, 1991

B. COUNT II--FRAUDULENT DEVICES AND
ARTICLES IN VIOLATION OF RULE-10B-5

1. Moran committed acts and practices and engaged in a course of business which operated as a fraud or deceit on McNally, in violation of section 10(b) of the 1934 Act, 15 U.S.C. section 78j and c(c), and Rule 10b-5.

C. COUNT IV--MISREPRESENTATIONS
AND OMISSIONS UNDER 1933 ACT

1. Moran facilitated the offer and sale of securities to McNally by means and/or instruments of transportation and communications in interstate commerce and through the mail, and oral communications.

2. Moran's use of such means and/or instruments of transportation or communications in interstate commerce included untrue statements and omissions of material fact in violation of section 12(2) of the 1933 Act, 15 U.S.C. section 771(2).

3. McNally did not know of the untruths and omissions when she liquidated her stock and reinvested the proceeds and subsequently retained her investments.

D. COUNT VI--MISREPRESENTATIONS AND OMISSIONS
IN VIOLATION OF MICHIGAN UNIFORM SECURITIES ACT

1. The untrue statement and omissions of material fact made by Moran violated MCLA 451810(a) (2) and (3).

E. COUNT V--COMMON LAW FRAUD

1. Moran intentionally and recklessly made untrue statements and omissions of material fact to McNally with the intent of inducing her to rely on them. Moran INTENTIONALLY AND RECKLESSLY recommended that McNally liquidate her stocks, and reinvest the proceeds in TOTALLY INAPPROPRIATE AND UNSUITABLE investments and maintained these investments while they declined precipitously in value.

2. McNally reasonably relied on the misrepresentations and omissions of Moran. As direct and proximate result of her reliance on the false representations and omissions of Moran, McNally has suffered substantial damages.

F. COUNT IX--INNOCENT MISREPRESENTATION

1. Even if the misrepresentations and omissions of Moran were not fraudulent, but were innocent, they nonetheless induced McNally to engage in securities transactions recommended by and with Moran and NAIC.

2. As a direct and proximate result of entering into these transactions in reliance on the representations of Moran, McNally suffered substantial damages. Moran benefited from the transactions with McNally

G. COUNT XI--NEGLIGENCE

1. Moran breached the following duties owed to McNally:

- (a) to adequately disclose the risks associated with the securities transactions;
- (b) to refrain from self-dealing transactions;
- (c) to disclose any personal interest which Moran had in the securities transactions;
- (d) not to misrepresent any fact material to the securities transactions, and to affirmatively and accurately represent all facts material to the securities transactions; and
- (e) to obey all rules and regulations promulgated by all federal and state governmental authorities, bodies and /or entities.

2. As a direct, proximate and reasonable foreseeable result of Moran's breach of fiduciary duties, McNally has suffered substantial damages.

ORDER

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. Respondent, Barbara L. Moran, is hereby liable and shall pay to the Claimant the following amounts:

- (a) \$20,587.71 (Twenty Thousand Five Hundred Eighty Seven Dollars And Seventy One Cents) as to North American Ventures Inc.
- (b) \$25,333.30 (Twenty Five Thousand Three Hundred Thirty Three Dollars And Thirty Cents) as to Balcor Mobile Home.

- (c) \$1,948.89 (One Thousand Nine Hundred Forty Eight Dollars And Eighty Nine Cents) as to Putnam Option Income Trust I.
 - (d) \$1,893.51 (One Thousand Eight Hundred Ninety Three Dollars And Fifty One Cents) as to Putnam Option Income Trust II.
- 2. Respondent, Barbara L. Moran is hereby liable and shall pay to the Claimant Prejudgment interest from October 15, 1990 to the date of this award and post-judgment interest from the date of the award until such time as the award is paid, as determined by MCR and Statute.
 - 3. Respondent, Barbara L. Moran, is hereby liable and shall pay to Claimant attorneys fees in the amount of \$16, 620.98. Interest shall accrue on this amount from the date of the award until such time as the amount is paid.

OTHER COSTS

Respondent, Barbara L. Moran, is hereby liable and shall pay to the Claimant, costs in the amount of \$1,049.60 (One Thousand Forty Nine Dollars And Sixty Cents).

FORUM FEES

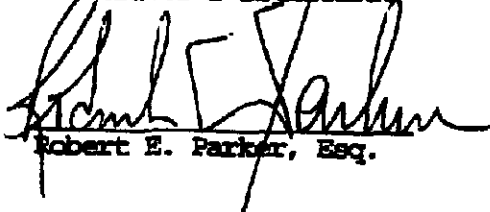
Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

Non-refundable filing fee: \$ 150
Hearing Fees: \$1,000 (2 sessions X \$500)

All Forum Fees are hereby assessed against the Respondent, Barbara L. Moran. Accordingly, Moran is directed to re-inburse to the Claimant the amount of \$650.00 previously deposited with the NASD. Moran is further directed to pay the balance of \$500.00 to the NASD, Inc.

Arbitrator's Signature:

Public Chairperson


Robert E. Parker, Esq.

Date Of Decision: October 28, 1992