

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

JULIE KERSHNER

Claimant

and

90-03405

RAF FINANCIAL CORPORATION AND  
GERALD W. GROVER

Respondents

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REPRESENTATION OF PARTIES

Julie Kershner was represented by Miles M. Gersh, Esq. of Gersh & Danielson, Denver, Colorado.

RAF Financial Corporation was represented by Gene R. Thornton, Esq., and Victor M. Morales, Esq. of Hopper and Kanouff, P. C., Denver, Colorado.

Gerald W. Grover was represented by Russell Bean, Esq. of Kryz, Boyle, Golz, Reich & Friedman, Denver, Colorado.

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about November 30, 1990, Julie Kershner ("Claimant") alleged that RAF Financial Corporation ("RAF") and Gerald W. Grover ("Grover") (collectively as "Respondents") violated federal and state securities laws, breached a clearly existing fiduciary duty and committed fraud and negligence in connection with the handling of her investment portfolio. Claimant specifically alleged: that she was a financially unsophisticated single woman that had inherited her parents stock and bond portfolio; that she was introduced to Grover by a co-worker; that Grover advised her to liquidate the entire portfolio and invest the proceeds in speculative penny stocks including Johnny Bull Operating Company; and that Grover and RAF failed to disclose the financial condition of Johnny Bull Operating Company.

In its Answer filed with the NASD on or about February 20, 1991, RAF denied that it was engaged in a fiduciary relationship with claimant and stated that all of the transactions in Claimant's account was the result of arms length transactions; that Claimant retained control over her own investment decisions; that it had in place a supervisory system which met all industry standards; RAF further stated that at no time did it ratify or authorize any alleged misrepresentations and alleged wrongful acts of Grover. RAF also asserted the following affirmative defenses: contributory

negligence, ratification, estoppel, waiver, the claims are barred by the statute of frauds and the parol evidence rule, and failure to mitigate.

In his Answer filed with the NASD on or about March 6, 1991, Respondent Grover stated that the Claimant's inherited portfolio was liquidated upon the request of Claimant and subsequently invested in municipal bonds to produce higher tax-free income and other more speculative investments. Grover stated that all securities acquired by Claimant were suitable for her investment objectives and financial condition. Respondent Grover further stated that the Claimant relied upon their mutual friend Michael Kerrigan and not on Grover in making her investment decisions regarding Johnny Bull Operating Company. The allegation that Grover was aware of any material omissions in the offering memorandum used in connection with Johnny Bull Operating Company was denied. Grover stated that Claimant had better access to and more current information about Johnny Bull Operating Company than he had. The following affirmative defenses were asserted by Respondent Grover: the claim fails to state a claim upon which relief can be granted, contributory negligence, lack of intent, and the statute of limitations.

#### RELIEF REQUESTED

Claimant requested an award in the amount of \$145,000.00, against Grover and \$80,000 against RAF attorneys' fees pursuant to 1973 C.R.S. Section 11-51-125(1) and (2), expert witness fees pursuant to 1973 C.R.S. Section 13-33-102 and punitive damages pursuant to 1973 C.R.S. Section 13-51-107.

Respondent RAF requested that the claims asserted against it be dismissed and that it be awarded its attorneys fees and costs pursuant to C.R.S. Section 13-17-101 et. seq.

Respondent Grover requested that the Statement of Claim be dismissed in its entirety and that he be awarded costs and fees.

#### PROCEDURAL MATTERS

On Thursday, July 25, 1991, Friday, July 26, 1991, Monday, August 12, 1991, and Tuesday, August 13, 1991 in Denver, Colorado during a hearing lasting a total of ten (10) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on November 29, 1990 by Claimant Julie Kershner on February 19, 1991 by Arlene M. Wilson on behalf of Respondent RAF Financial Corporation and on April 1, 1991 by Respondent Gerald W. Grover.

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

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant Julie Kershner shall be awarded \$60,000.00 plus interest at the rate of 8% simple from September 17, 1986 until paid.
2. Claimant Julie Kershner shall be paid her expert witness fees.
3. Forum fees shall be paid by respondents.
4. Respondents RAF Financial Corporation and Gerald W. Grover are jointly and severally liable for payment of the foregoing amounts by no later than 30 days from the date of this award.

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed:

10 sessions x \$750.00 = \$7,500.00

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

The hearing session deposit in the amount of \$750.00 shall be refunded to the Claimant.

Dated:

August 23, 1991

/S/ Susan M. Thevenet, Esq.  
Susan M. Thevenet, Esq.  
Presiding Chair  
Public Arbitrator

August 23, 1991

/S/ James Cronin, Esq.  
James Cronin, Esq.  
Public Arbitrator

August 23, 1991

/S/ John McKenna  
John McKenna  
Industry Arbitrator