

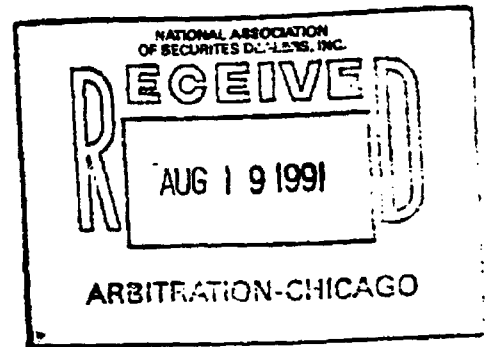
N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Claude and JoBeth Sharpensteen



90-03420

Name of Respondent(s)

Boucher, Oehmke & Company
Bryce Boucher
Donald Oehmke

REPRESENTATION

Claimants Claude and JoBeth Sharpensteen were represented by Michael Salcido, Esq. of Burch & Cracchiolo, P.A., Phoenix, Arizona.

CASE INFORMATION

Statement of Claim filed: December 3, 1990

Claimant's Submission Agreement signed on: November 2, 1990

Statement of Answer filed by Respondent, Donald E. Oehmke on: February 22, 1991.

Respondent, Donald E. Oehmke's Submission Agreement signed on: February 18, 1991.

Respondents Boucher, Oehmke & Co. and Bryce Boucher did not file with the NASD a properly executed submission to arbitration, but is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure and is bound by the determination of the arbitration panel on all issues submitted.

HEARING INFORMATION

Hearing Date/Sessions: June 21, 1991 for two (2) sessions.

Hearing Location: Phoenix, Arizona

CASE SUMMARY

Claimants Claude Sharpensteen III and JoBeth Sharpensteen ("Sharpensteen") alleged that Respondents Boucher, Oehmke & Company ("Company"), Bryce Boucher ("Boucher") and Donald Oehmke ("Oehmke") sold to them unsuitable investments in a promissory note made by Land America TN-200-001, an Arizona general partnership, becoming beneficiaries of a trust agreement, and in a limited partnership interest in Western Date Ranches LP. These investments were alleged to be unsuitable in light of the Sharpensteen's financial background and investment objectives. In addition, the Sharpensteen's claimed that Respondents misrepresented or omitted material facts regarding the investments in order to induce the purchase and that the investments were not registered. Based upon the above allegations, the Sharpensteen's asserted violations of the securities laws for fraud and the sale of unregistered securities; violation of the Arizona racketeering statutes (A.R.S. Section 13-230, et seq); breach of fiduciary duty; breach of contract and negligence.

Respondent Donald E. Oehmke ("Oehmke") denied the material allegations of the Statement of Claim, alleging the following defenses:

1. The claim is barred by estoppel, failure of consideration, illegality, laches, release, statute of frauds, statute of limitations and waiver;
2. The claim should be dismissed pursuant to Rule 19 of the Arizona Rules of Civil Procedure for failure to join indispensable parties;
3. The complaint fails to state a claim upon which relief can be granted;
4. The claimants are mentally unable to bring or prosecute this action;
5. Claimants have not sustained any damages for which there is a cause of action against Respondent;
6. Claimants released all parties except respondents regarding the investment in Land America TN-200-001; and
7. Claimants are committing abuse of process and malicious prosecution.

Respondent Donald E. Oehmke did not appear at the hearing. Upon review of the record and the representations of Claimants, the panel determined that Oehmke had received due notice of the hearing and that arbitration of the controversy would proceed pursuant to Section 29 of the Code of Arbitration Procedure.

Respondents Boucher, Oehmke & Company ("Company"), Bryce Boucher ("Boucher") did not file an answer or appear at the hearing. Upon review of the record and the representations of Claimants, the panel determined that

the Company and Boucher had been properly served with the Statement of Claim and due notice of the hearing and that arbitration of the controversy would proceed pursuant to Section 29 of the Code of Arbitration Procedure.

RELIEF REQUESTED

Claimants Claude Sharpensteen III and Jo Beth Sharpensteen requested entry of an award against Respondents in the amount of not less than \$25,000 for compensatory damages; treble damages pursuant to A.R.S. Sec. 13-2314(A); punitive damages; pre- and post-judgment interest as allowed by law; attorneys' fees and costs.

Respondent Donald Oehmke requested that the statement of claim be dismissed and denied in its entirety with prejudice and for attorneys' fees and costs.

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. 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 original remains on file with the NASD;
2. Respondents Boucher, Oehmke and Company and Donald E. Oehmke are jointly and severally liable for and shall pay to Claimants Claude Sharpensteen III and JoBeth Sharpensteen the sum of \$74,829.03;
3. The claim against Bryce Boucher individually is hereby dismissed and denied in its entirety;
4. Parties shall bear their own costs of arbitration, except for those specifically enumerated herein.

FORUM FEES

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

The National Association of Securities Dealers, Inc. shall retain the \$150.00 claim filing fee and the \$500.00 hearing session deposit previously deposited by the Claimants Claude and JoBeth Sharpensteen. Respondents Boucher, Oehmke and Company and Donald E. Oehmke are jointly and severally liable for and

shall pay to the NASD additional forum-fees in the sum of \$500.00.

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

BY THE ARBITRATION PANEL

DATED:

Craig W. Soland, Esq.
Presiding Chair
Public Arbitrator

Glenn Rosenthal, Esq.
Public Arbitrator

Marvin J. Klein
Marvin J. Klein
Industry Arbitrator

8-10-91

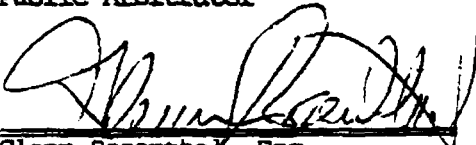
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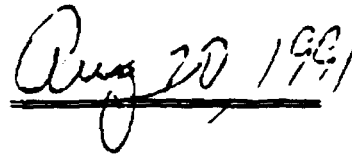
BY THE ARBITRATION PANEL

DATED:

Craig W. Soland, Esq.
Presiding Chair
Public Arbitrator



Glenn Rosenthal, Esq.
Public Arbitrator




Marvin J. Klein
Industry Arbitrator

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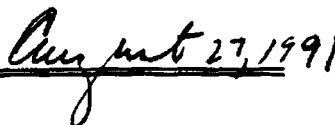
Fees are payable to the National Association of Securities Dealers, Inc.

BY THE ARBITRATION PANEL

DATED:



Craig W. Soland, Esq.
Presiding Chair
Public Arbitrator



August 27, 1991

Glenn Rosenthal, Esq.
Public Arbitrator

Marvin J. Klein
Industry Arbitrator
